

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Sunday, November 22, 2015 12:29 PM
To: Keith R. Powell
Subject: Re: CORRECTED E: RF revisions to checked draft 11_20_2015

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Awesome !!!

I will be home in about 30 minutes and will take a look at it, thanks

Sent from my iPhone

On Nov 22, 2015, at 12:04 PM, Keith R. Powell <kpowell@childs-halligan.net> wrote:

Sorry Robbie – I ran the “final” off the wrong base document, which is why you had fewer changes. Try this one. Getting to Ex A separately.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Robbie Ferris [<mailto:RFerris@sfla.biz>]
Sent: Saturday, November 21, 2015 7:10 PM
To: Keith R. Powell
Cc: Aaron Thomas (athomas@metconus.com); Michael Richter
Subject: RE: CORRECTED E: RF revisions to checked draft 11_20_2015

Keith,

When you make these changes I need to send the final to the bonding company for their approval. Here are my comments.

I just happened to find one item A.3.1.6 and A.3.1.7 that I thought were had agreed upon that was changed. If there are other substantial things that you changed please let me know where they are.

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To: Robbie Ferris

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To: 'Robbie Ferris'

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How are these? Will make changes for MB and SMS issues.

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<a141 ffep - Final - (1).pdf>

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Sounds good, will you contact the board chair to meet us, he could meet us at 3:30, that will give me a few minutes to double check all the allowances and contract amounts...

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From: Robbie Ferris <RFerris@sfla.biz>
Sent: Sunday, November 22, 2015 3:24 PM
To: Keith R. Powell
Subject: Horry County Schools-contracts

Follow Up Flag: Follow up
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Categories: Red Category

Keith,

I am sorry but the bonding company just sent me these two items:
They promised they have no other comments...

- In the AIA 312 **Performance Bond**, please remove section 16.2; and replace with:

"In no event shall the surety be liable under this bond for any design services or design work furnished by the Principal, or its engineers, architects or consultants in connection with this contract."

- In **Exhibit B**, and more specifically in B.2.2, please insert the following as was modified in the RFP:
(they did not like what you had)

"In no event shall the surety be liable under this bond for any design services or design work furnished by the Principal, or its engineers, architects or consultants in connection with this contract."



Robert W. Ferris, AIA, REFP, LEED AP
CEO/President
SfL+a Architects
333 Fayetteville Street, Suite 225
Raleigh, NC 27601
Cell: 919.610.2251
Fax: 919.573.6355
rferris@sfla.biz
www.sfla.biz

"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

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Follow Up Flag: Follow up
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SfL+a Architects
333 Fayetteville Street, Suite 225
Raleigh, NC 27601
Cell: 919.610.2251
Fax: 919.573.6355
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Sheri L. Wainscott

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Call me if you have any questions. I'm at the office.

Warm Regards,

Aaron Thomas, MCM, LEED-AP | President
Metcon, Inc. | 763 Comtech Drive | PO Box 1149 | Pembroke,
NC 28372
office 910.521.8013 | mobile 910.734.0537
| email:athomas@metconus.com
website | linkedin | twitter | instagram

Sheri L. Wainscott

From: Keith R. Powell
Sent: Sunday, November 22, 2015 3:56 PM
To: Robbie Ferris
Cc: William F. Halligan
Subject: Re: Horry County Schools-contracts
Attachments: image002.png

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

We will have to see about that with the district. This is a significant change from what was published in the RFP and committed to in your comments. We issued an addendum on this because others did express concern and HCS arrived at a compromise that the bond would only be excess to the professional liability policies. In a design-build the HCS has one entity counterparty for design and build and wants both performed with security.

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I actually did not see this as different than what was already in exhibit B. I am not a lawyer or an insurance guy and am likely missing something. I have sent your comment to the bonding company, lets see what they say.

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From: Keith R. Powell
Sent: Saturday, November 21, 2015 4:13 PM
To: 'Robbie Ferris'
Subject: RE: RF revisions to checked draft 11_20_2015

How are these? Will make changes for MB and SMS issues.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Robbie Ferris [<mailto:RFerris@sfla.biz>]
Sent: Saturday, November 21, 2015 1:17 PM
To: Keith R. Powell
Subject: Fwd: RF revisions to checked draft 11_20_2015

Keith please see below, there are a few tweaks to what we sent you last night. It should simplify things a little and take some of the?'s that could arise later out

Sent from my iPhone

Begin forwarded message:

From: Aaron Thomas <athomas@metconus.com>
Date: November 21, 2015 at 1:15:16 PM EST
To: "Robert W. Ferris" <rferris@sfla.biz>
Subject: FW: RF revisions to checked draft 11_20_2015

Robbie- I just read this again and realized we had made a mistake that could cause confusion. The attached revision made 2 minor changes to what we sent last night:

1. On weather delays I deleted the reference to the 10 year NOAA average being a baseline we would compare to. I did this because if we are already using 2 days per month as the baseline for adverse weather all we need NOAA for is to substantiate the days over 2 so it is not subjective in nature with the staff. Example If we have 5 days of rain in December 2015 that is over .10" then we would turn in the NOAA report for the project locale showing we had the 5 days over .10 and we would get an extension via change order for 3. $<(5) \text{ days over } .10'' - (2) \text{ days expected in contract} = (3) \text{ days extension}>$
2. I also added ACT OF GOD Language to the 8.2.1. We talked about it but forgot to add it. Must have been tired.

Call me if you have any questions. I'm at the office.

Warm Regards,

Aaron Thomas, MCM, LEED-AP | President
Metcon, Inc. | 763 Comtech Drive | PO Box
1149 | Pembroke, NC 28372
office 910.521.8013 | mobile 910.734.0537
| email: athomas@metconus.com
[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)

Sheri L. Wainscott

From: Keith R. Powell
Sent: Sunday, November 22, 2015 4:12 PM
To: Robbie Ferris
Cc: William F. Halligan
Subject: Re: Horry County Schools-contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

FYI It's not extra liability insurance- the bond is there to ensure that the surety will pay for somebody whose design will meet the SC standard of care if the DB fails to do so.

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On Nov 22, 2015, at 4:01 PM, Robbie Ferris <RFerris@sfla.biz> wrote:

I actually did not see this as different than what was already in exhibit B. I am not a lawyer or an insurance guy and am likely missing something. I have sent your comment to the bonding company, lets see what they say.

From: Keith R. Powell [<mailto:kpowell@childs-halligan.net>]
Sent: Sunday, November 22, 2015 3:56 PM
To: Robbie Ferris
Cc: William F. Halligan
Subject: Re: Horry County Schools-contracts

We will have to see about that with the district. This is a significant change from what was published in the RFP and committed to in your comments. We issued an addendum on this because others did express concern and HCS arrived at a compromise that the bond would only be excess to the professional liability policies. In a design-build the HCS has one entity counterparty for design and build and wants both performed with security.

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On Nov 22, 2015, at 3:24 PM, Robbie Ferris <RFerris@sfla.biz> wrote:

Keith,

I am sorry but the bonding company just sent me these two items:

They promised they have no other comments...

- In the AIA 312 **Performance Bond**, please remove section 16.2; and replace with:

"In no event shall the surety be liable under this bond for any design services or design work furnished by the Principal, or its engineers, architects or consultants in connection with this contract."

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<image002.png>

Robert W. Ferris, AIA, REFP, LEED AP
CEO/President
SFL+a Architects
333 Fayetteville Street, Suite 225
Raleigh, NC 27601
Cell: 919.610.2251
Fax: 919.573.6355
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"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Sunday, November 22, 2015 4:14 PM
To: Keith R. Powell
Cc: William F. Halligan
Subject: RE: Horry County Schools-contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

I am arguing that point as I type this.

From: Keith R. Powell [<mailto:kpowell@childs-halligan.net>]
Sent: Sunday, November 22, 2015 4:12 PM
To: Robbie Ferris
Cc: William F. Halligan
Subject: Re: Horry County Schools-contracts

FYI It's not extra liability insurance- the bond is there to ensure that the surety will pay for somebody whose design will meet the SC standard of care if the DB fails to do so.

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<image002.png>

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"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

Sheri L. Wainscott

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Sent: Sunday, November 22, 2015 4:17 PM
To: Robbie Ferris
Cc: William F. Halligan
Subject: Re: Horry County Schools-contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

And On the payment bond it is to ensure that designers get paid so the district does not have to worry about that. VWR have seen this as an issue with civil engineering services around post occupancy storm water systems covenants to DHEC, for example. SC law allows design professionals payment bond protection so I want the payment bond to mirror the statute and not have HCS drawn into a disputed engineer payment - legally or politically.

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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Sunday, November 22, 2015 4:59 PM
To: Keith R. Powell
Cc: William F. Halligan
Subject: RE: Horry County Schools-contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,

The bonding agent agrees that your language should suffice. He is trying to rally the lawyers. I think you want the same thing they want but they are stuck on their words. I don't quite get that.

I think this will get resolved no later than first thing in the morning....

The agent says he thinks he can help them thru the language. Your last two notes about your concerns were very, very helpful.

Robbie

From: Keith R. Powell [mailto:kpowell@childs-halligan.net]
Sent: Sunday, November 22, 2015 4:17 PM
To: Robbie Ferris
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Subject: Re: Horry County Schools-contracts

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<image002.png>

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"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Sunday, November 22, 2015 5:05 PM
To: Keith R. Powell
Subject: FW: Horry County to FFEP Contract and Allowance Values

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,
Feel free to use this as a double check after you fill in the contract amounts and allowances.

From: Sam Isham [mailto:sisham@metconus.com]
Sent: Sunday, November 22, 2015 4:40 PM
To: Robbie Ferris
Cc: Aaron Thomas; Michael Richter; Mike Mitchell; Ryan Parker
Subject: Horry County to FFEP Contract and Allowance Values

Horry County Schools Summary Report 11/22/201			
Carolina Forest Middle Myrtle Beach Mittle St James I			
Project Contract Value	\$ 45,930,227	\$ 46,485,102	\$
Owner Furniture Allowance	\$ 1,500,000	\$ 1,500,000	\$
Owner Hardware Allowance	\$ 350,000	\$ 350,000	\$
Owner Controls Allowance	\$ 650,000	\$ 650,000	\$
Owner Fire Alarm Allowance	\$ 750,000	\$ 750,000	\$
Owner Playground Equip. Allowance			\$
Owner Special Inspections Allowance	\$ 150,000	\$ 150,000	\$
Owner Commisioing Allowance	\$ 125,000	\$ 125,000	\$
Owner Technology Allowance	\$ 1,865,000	\$ 1,865,000	\$
Design Builder Landscaping Allowance	\$ 200,000	\$ 200,000	\$
Design Builder Complete Site Package Allowance			

Respectfully,
Sam

Sam Isham 32°, LEED AP | Executive Vice President
Metcon, Inc. | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372
office 910.521.8013 | mobile 910.374.5620 | email: sisham@metconus.com
[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)



PEMBROKE | RALEIGH | CHARLOTTE | COLUMBIA

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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Sunday, November 22, 2015 6:23 PM
To: Keith R. Powell
Subject: FW: HCS - Revised Invoices
Attachments: Invoice_#1_Carolina Forest_2.docx; Invoice_#1_Mrytle Beach MS_2.docx; Invoice_#1_Socastee ES_2.docx; Invoice_#1_Socastee MS_2.docx; Invoice_#1_St. James_2.docx; Wire Instructions for FFEP LLC_HCS_Team_11172015.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,

These are the invoices I plan on submitting. Since the school folks are not talking to us until we get a contract can you tell me what we need to do to officially submit these? If they do wire transfers that is always best for us so we can pay people faster. We have included wire transfer instruction in case they are able to do wire transfers.

Robbie

From: Rick Green
Sent: Sunday, November 22, 2015 6:14 PM
To: Robbie Ferris
Subject: HCS - Revised Invoices

Here you go!!! I've also attached the wire instructions to move funds into the Firstfloor Energy Positive (HCS Team) account at BB&T.

Richard A. Green

Firstfloor Inc.
4400 Silas Creek Parkway, Ste. 200
Winston Salem, NC 27104
Office: (336) 794-2325
Fax: (336) 768-7666
rgreen@firstfloor.biz

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Wednesday, November 04, 2015 9:03 AM
To: Keith R. Powell
Subject: Fwd: 1415-91 Notices of Intent to Award
Attachments: ATT00001.htm; 1415-91 NOI CFM.pdf; ATT00002.htm; 1415-91 NOI MBM.pdf; ATT00003.htm; 1415-91 NOI SES.pdf; ATT00004.htm; 1415-91 NOI SJI.pdf; ATT00005.htm; 1415-91 NOI SMS.pdf; ATT00006.htm

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Sent from my iPhone

Begin forwarded message:

From: Ara Heinz <AHeinz@horrycountyschools.net>
Date: November 3, 2015 at 5:14:12 PM EST
To: Robbie Ferris <RFerris@sfla.biz>, "rferris@firstfloor.biz" <rferris@firstfloor.biz>
Cc: Danielle Davis <ddavis@sfla.biz>
Subject: 1415-91 Notices of Intent to Award

Mr. Ferris,

Please find attached the Notices of Intent to Award from Horry County Schools for the Design-Build Delivery of New School Facilities projects (# 1415-91). Barring any protests or issues with providing the information listed in the NOI, the official contract could be executed and go into effect on November 19, 2015. (The NOI's have also been uploaded to our website at <http://apps.hcs.k12.sc.us/apps/protrac/>.)

I am sure that either our attorneys or someone from the District will be in contact with you soon to discuss the next steps, but if you have any questions or concerns about documents, communications, procedures, etc., please do not hesitate to contact me.

Thank you for participating in this solicitation! We look forward to working with you and your team on this project!

Regards,
Ara

Ara Heinz | Procurement Services | P: 843/488-6930
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526
Website: Procurement.horrycountyschools.net

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Thursday, November 05, 2015 10:50 AM
To: Keith R. Powell
Subject: Horry

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Any chance we can get owner to sign early site packages so we can formally submit

Sent from my iPhone

Sheri L. Wainscott

From: Keith R. Powell
Sent: Friday, November 06, 2015 10:25 AM
To: Robbie Ferris
Subject: RE: Horry

Follow Up Flag: Follow up
Flag Status: Flagged

Does not sound like they are interested.

Keith R. Powell
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-----Original Message-----

From: Robbie Ferris [<mailto:RFerris@sfla.biz>]
Sent: Thursday, November 05, 2015 10:50 AM
To: Keith R. Powell
Subject: Horry

Any chance we can get owner to sign early site packages so we can formally submit

Sent from my iPhone

Sheri L. Wainscott

From: Keith R. Powell
Sent: Wednesday, November 11, 2015 10:54 AM
To: Robbie Ferris
Subject: RE: Hcs new schools early site packages

Follow Up Flag: Follow up
Flag Status: Flagged

Sentiment is not to do anything unusual. You should build your schedules from the 19th I guess, or maybe the 20th if that is when you will have business license, insurance and bonds.

Keith R. Powell
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-----Original Message-----

From: Robbie Ferris [<mailto:RFerris@sfla.biz>]
Sent: Monday, November 09, 2015 5:18 PM
To: Keith R. Powell; Ara Heinz <AHeinz@horrycountyschools.net>
Cc: Danielle Davis; Mike Wawrzyniak; Ryan Parker; JOHN H.RICHARDS
Subject: Hcs new schools early site packages

Keith/ Ara,

We would very much like to submit the early site packages for agency approval as soon as possible. Every day gained on the front end of the project is a day gained at the back end of the project. Please consider our request to have the owner sign the early site package applications so we can submit them sooner than later. We fully understand that our submission of these early site packages would be done at risk.

Thank you for your consideration of this request.

Robbie

Sent from my iPhone

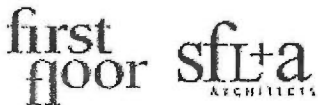
Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Wednesday, November 11, 2015 5:01 PM
To: Keith R. Powell
Subject: Firstfloor

Follow Up Flag: Follow up
Flag Status: Flagged

Keith,
Firstfloor energy positive has 3 member managers. This allows any of the 3 managers to sign for the company. I will be the primary
Richard Green and Eric Lindstrom are also member managers and can sign for the company. Apparently some smart lawyer suggested this so that documents could still be signed if someone goes on vacation etc...Vacations are not common occurrences with me so it will not likely be an issue.

Robbie



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rferris@sfla.biz
www.sfla.biz

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Wednesday, November 11, 2015 9:08 PM
To: Keith R. Powell
Subject: HCS contracts

- 1.1.3-The projects physical characteristics should refer back to the design builders proposal
- 1.1.9- This should also reference the design builders proposal
- 1.4.1-The design build proposal should be attached to make it a part of the design build documents
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- 2.1.4.1- With this project moving as fast as it is supposed to move, paying within 30 days is far more reasonable than 45 days. Is there a reason HCS can't pay within 45 days. We usually try to pay contractors within 7 days on projects that we own and it is serious motivator. When you pay fast you have lots of leverage with subs.
- 2.1.4.1-Some interest should be paid on late payments. 1% per month is normal. Do they have problems with paying their bills on time?
- 5.7.2- Line 5 and line 7 - can we change 14 days to 7 days – this job needs to move fast.
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- 6.3.7- Can we have a clause about the retention of the DB on the release of the retention and release of retainage.
- 7.2.3-Is there anything missing in this article? I am missing something.
- 9.7 – Give me a clause about the retention of the DB on the release of the retention.
- 10.3- Acco... at MB middle. Should we...
- 12.3.2- I do not want to use the... ect responsible for... that problem...
- 13.2.4.3- V... act. We could...
- A.3.1.6- De... ner to comply... The design... with the re...
- A.4.1.and A.4.2 We will get you the info to fill in blanks asap.

Robert W. Ferris, AIA, REFP, LEED AP
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"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

Sheri L. Wainscott

From: Keith R. Powell
Sent: Thursday, November 12, 2015 10:12 AM
To: Robbie Ferris
Subject: RE: HCS contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks. I ran it in "variance check" mode this time, so as I told your colleagues, it looks quite different from the earlier version but I didn't actually change all that much in the text. I think a lot of these were in the one published in the addendum, but that does not mean we cannot make reasonable adjustments. However I'll have to do more discussions with HCS about anything that changes from the original that is not just filling in blanks.

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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Thursday, November 12, 2015 5:20 PM
To: Keith R. Powell
Subject: Horry county schools

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith

This relates back to Our proposal taking precedent over the RFP. We had additional allowances in our proposal that were not outlined in the RFP. For example we had \$200,000 for landscaping in our proposal.

Sent from my iPhone

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Thursday, November 12, 2015 9:06 PM
To: Keith R. Powell
Subject: Re: HCS contracts
Attachments: image001.png

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Ok

I understand, I will go back and look at my rfp version again

I do think many of my comments would accrue to the benefit of the district

As well as to us

Robbie

Sent from my iPhone

On Nov 12, 2015, at 10:12 AM, Keith R. Powell <kpowell@childs-halligan.net> wrote:

Thanks. I ran it in "variance check" mode this time, so as I told your colleagues, it looks quite different from the earlier version but I didn't actually change all that much in the text. I think a lot of these were in the one published in the addendum, but that does not mean we cannot make reasonable adjustments. However I'll have to do more discussions with HCS about anything that changes from the original that is not just filling in blanks.

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<image001.png>

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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 12:15 PM
To: Keith R. Powell
Subject: Horry allowance

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,

I recall the board approving funds to restore the owner contingency. I assume that contingency will be held outside of our contract, however if we want it inside of our contract for some reason we can do that but we would have to increase The contract amount by the amount of the owner contingency. I am fine with it either way.

Robbie

Sent from my iPhone

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 3:10 PM
To: Keith R. Powell
Subject: HCS contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,

Would it make sense if you set up a meeting for next Thursday where we go to Horry and I and the owner sign contracts?

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Here is the info for the remaining blanks:

A2.2- Keith these are the days for each project per the schedule in our proposal:

Carolina Forest MS
Myrtle Beach MS
St James IS
Socastee ES
Socastee MS

Article A.4:

Carolina Forest Middle School:
Superintendent: Mark Branch
Project Manager: Charlie Rollins
Assistant Superintendent: Gary Pipkin

Myrtle Beach Middle School:
Superintendent: Ed Bruce
Project Manager: Rusty Woolard
Assistant Superintendent: Ray Carrino

St. James Intermediate:
Superintendent: Randall Jernigan
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Article A.4.2

SfL+a Architects: Architect, Raleigh NC
 Metcon/TA Loving joint venture: General Contractor, Pembroke NC

Article 3.1.5.1

Keith

In addition to the allowances in the RFO, listed below, we have a landscaping allowance of \$200,000 for each school except that we have 250,000 for myrtle beach middle school. Our overhead and profit is outside this number. This is the amount that we can issue to subcontractors for the actual work. If we don't spend all of this HCS will get it back. You can list this in the allowance section or the contingency section, I don't think it matters...

	CF	MB	SJ	SM	SE	total not including
the landscape allowance						
1030.000 - Owner Furniture Allowance	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ 1,250,000	\$ 1,000,000	
1031.000 - Owner Hardware Allowance	\$ 350,000	\$ 350,000	\$ 350,000	\$ 350,000	\$ 250,000	
1032.000 - Owner Controls Allowance	\$ 650,000	\$ 650,000	\$ 650,000	\$ 650,000	\$ 500,000	
1033.000 - Owner Fire Alarm Allowance	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 600,000	
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1035.000 - Owner Special Inspections All	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	
1036.000 - Owner Commissioning Allo	\$ 125,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 100,000	
1037.000 - Owner Technology Allowance	\$ 1,865,000	\$ 1,865,000	\$ 1,865,000	\$ 1,645,000	\$ 1,275,000	
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Sheri L. Wainscott

From: Keith R. Powell
Sent: Friday, November 13, 2015 3:42 PM
To: Robbie Ferris
Subject: Re: HCS contracts
Attachments: image002.png

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Not a bad idea. I have morning booked up Thursday but could probably arrive mid afternoon.

Working on the owner rep issue.

Keith R. Powell
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Article A.4.2

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Metcon/TA Loving joint venture: General Contractor, Pembroke NC

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<image002.png>

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From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 3:43 PM
To: Keith R. Powell
Subject: Re: HCS contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Ok
Let me know

Sent from my iPhone

On Nov 13, 2015, at 3:42 PM, Keith R. Powell <kpowell@childs-halligan.net> wrote:

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<image002.png>

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 4:57 PM
To: Keith R. Powell
Subject: FW: Horry County School Schedule VS Proposal
Attachments: HCS - 4 School Combo - Schedule 09.01.15.pdf; HCS - 5 School Combo - 11.11.15 REV# 1.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,

I have included the email chain with our project manager so in case I don't fully describe the dates were proposing you will have the benefit of the schedule in his words.

We propose reducing the total duration from 575 days to 566 days in exchange for a bit of grace in how we get there. In our individual schedules, in our proposal, we made a mistake. We scheduled pilings on the wrong school so we corrected that mistake here. We propose you use the "revised" dates below for the contract. As far as Socastee MS goes my ideas are as follows:

Option 1: 547 days from a notice to proceed if pilings are not needed and 566 days if pilings are needed.

Option 2: A schedule will be determined once a site is selected but it is expected that the schedule will approximate the schedule for Socastee Elementary School

Robbie

From: Ryan Parker [mailto:rparker@metconus.com]
Sent: Wednesday, November 11, 2015 7:13 PM
To: Robbie Ferris
Cc: Aaron Thomas; Sam Isham; David Philyaw (dphilyaw@taloving.com); Mike Mitchell (mmitchell@taloving.com); mrichter@taloving.com; rlangston@taloving.com
Subject: RE: Horry County School Schedule VS Proposal

Robbie,

We need to discuss this tomorrow in depth so that everyone is on the same page before you submit to anyone with Horry County or their council.

- Notes
 - St. James and Carolina Forest had the pile activities switched which accounts for the difference in their duration
 - The proposal asked for a schedule for the 4 school combo. An assumption was made that land would be bought and mass grading drawings could be prepared close to or before the 10/5 start date. That didn't happen so the elementary school took the place of the middle school.
- Myrtle Beach Middle School
 - Original 10/5 thru 4/3 - 546
 - Revised 11/19 thru 5/19 - 547
- St. James Intermediate School
 - Original 10/5 thru 3/10 - 522

- Revised 11/19 thru 6/2 - 561
- Carolina Forest Middle School
 - Original 10/5 thru 4/25 - 568
 - Revised 11/19 thru 5/5 - 533
- Socastee Elementary
 - Original 10/5 thru 5/2 - 575
 - Revised 11/19 thru 6/7 - 566
- Socastee Middle School
 - No land at time of original subcontract
 - Original 4 School combo schedule didn't include elementary.

With Regards

Ryan Parker | Senior Project Manager
Metcon, Inc. | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372
 office 910.521.8013 | mobile 910.374.2766 | email:rparker@metconus.com
[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)



PEMBROKE | RALEIGH | CHARLOTTE | COLUMBIA

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Subject: RE: Horry County School Schedule VS Proposal

- Ryan, We need the days for each individual project since we have 5 contracts. This would be the days "From the Schedule submitted with the proposal"

From: Ryan Parker [mailto:rparker@metconus.com]
Sent: Wednesday, November 11, 2015 2:03 PM
To: Robbie Ferris
Cc: Aaron Thomas; Sam Isham; David Philyaw (dphilyaw@taloving.com); Mike Mitchell (mmitchell@taloving.com); mrichter@taloving.com; rlangston@taloving.com
Subject: Horry County School Schedule VS Proposal

Robbie,

In response to your question via text. *"The contract states the number of calendar days from a notice to proceed as opposed to a stipulated day. Ryan please tell me the number of calendar days in our proposal that was from the date we had shown them signing the grading application until we had shown the project being complete."*

- From the Schedule submitted with the proposal
 - Civil Mas Grading Drawings in for review October 5th 2015
 - Final Completion of all 4 projects 5/2/17

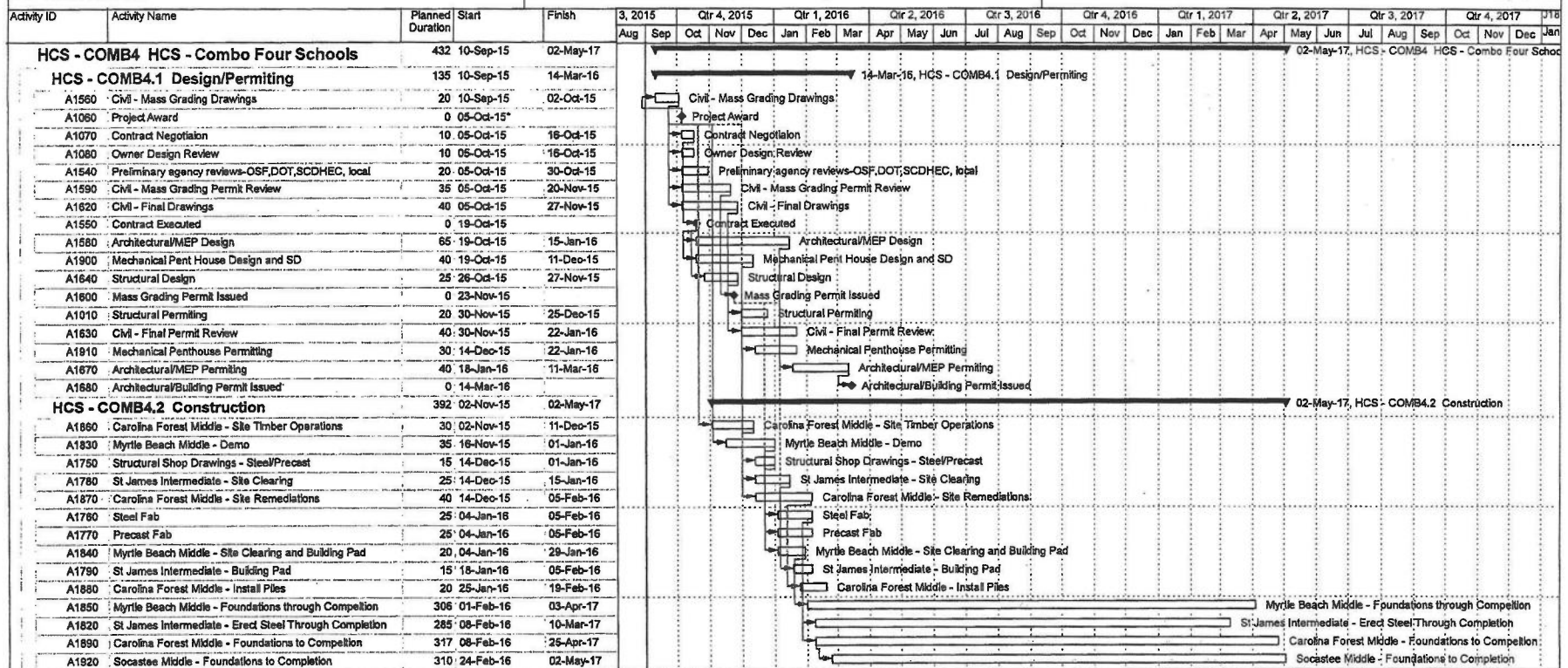
- Total Calendar Days – 575
- From the Updated Schedule – (conference call at 3:00 PM with Civil Engineer and Southern Asphalt)
 - Civil Mass Grading Drawings in for Review – 11/19/2015
 - Final Completion for all 4 projects – 6/7/2015
 - This doesn't include Socastee Middle which we don't have a site for. It is handled differently based on assumptions of when we will be given the site.
 - Total Calendar Days – 566 Days

With Regards

Ryan Parker | Senior Project Manager
Metcon, Inc. | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372
office 910.521.8013 | mobile 910.374.2766 | email:rparker@metconus.com
[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)



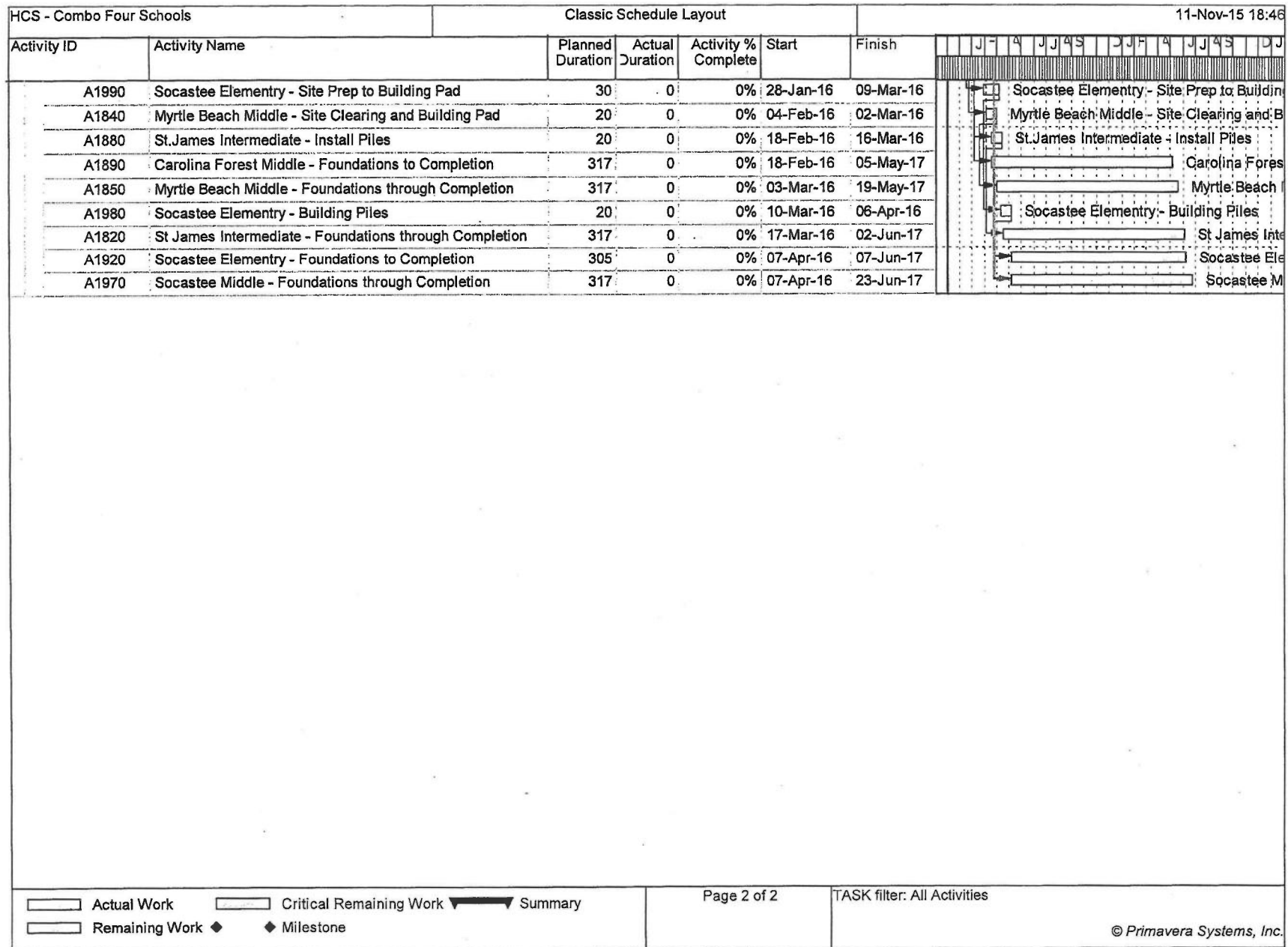
PEMBROKE | RALEIGH | CHARLOTTE | COLUMBIA



Actual Work Critical Remaining Work Summary
 Remaining Work Milestone

Activity ID	Activity Name	Planned Duration	Actual Duration	Activity % Complete	Start	Finish	
HCS - COMB4 HCS - Combo Four Schools		430	24		01-Sep-15	23-Jun-17	
HCS - COMB4.1 Design/Permitting		118	24		01-Sep-15	14-Apr-16	
A1560	Civil - Mass Grading Drawings	20	24	100%	01-Sep-15	29-Sep-15	Civil - Mass Grading Drawings
A1060	Project Award	0	0	0%	02-Nov-15*		Project Award
A1070	Contract Negotiation	13	0	0%	02-Nov-15	18-Nov-15	Contract Negotiation
A1080	Owner Design Review	13	0	0%	02-Nov-15	18-Nov-15	Owner Design Review
A1540	Preliminary agency reviews-OSF,DOT,SCDHEC, local	20	0	0%	19-Nov-15	16-Dec-15	Preliminary agency reviews-OSF,DOT,SCDHEC, local
A1550	Contract Executed	0	0	0%	19-Nov-15		Contract Executed
A1580	Architectural/MEP Design	65	0	0%	19-Nov-15	17-Feb-16	Architectural/MEP Design
A1590	Civil - Mass Grading Permit Review	35	0	0%	19-Nov-15	06-Jan-16	Civil - Mass Grading Permit Review
A1620	Civil - Final Drawings	65	0	0%	19-Nov-15	17-Feb-16	Civil - Final Drawings
A1640	Structural Design	25	0	0%	19-Nov-15	23-Dec-15	Structural Design
A1900	Mechanical Pent House Design and SD	40	0	0%	19-Nov-15	13-Jan-16	Mechanical Pent House Design and SD
A1010	Structural Permitting	20	0	0%	24-Dec-15	20-Jan-16	Structural Permitting
A1600	Mass Grading Permit Issued	0	0	0%	07-Jan-16		Mass Grading Permit Issued
A1910	Mechanical Penthouse Permitting	30	0	0%	14-Jan-16	24-Feb-16	Mechanical Penthouse Permitting
A1630	Civil - Final Permit Review	30	0	0%	18-Feb-16	30-Mar-16	Civil - Final Permit Review
A1670	Architectural/MEP Permitting	40	0	0%	18-Feb-16	13-Apr-16	Architectural/MEP Permitting
A1680	Architectural/Building Permit Issued	0	0	0%	14-Apr-16		Architectural/Building Permit Issued
HCS - COMB4.2 Socastee Middle		100	0		19-Nov-15	06-Apr-16	
A1930	Socastee Middle - Mass Grading Drawings	25	0	0%	19-Nov-15	23-Dec-15	Socastee Middle - Mass Grading Drawings
A1940	Socastee Middle - Mass Grading Permit Review	35	0	0%	24-Dec-15	10-Feb-16	Socastee Middle - Mass Grading Permit Review
A1950	Socastee Middle - Site Clearing	30	0	0%	14-Jan-16	24-Feb-16	Socastee Middle - Site Clearing
A1960	Socastee Middle - Site Prep to Building Pad	30	0	0%	25-Feb-16	06-Apr-16	Socastee Middle - Site Prep to Building Pad
HCS - COMB4.3 Construction		407	0		03-Dec-15	23-Jun-17	
A1860	Carolina Forest Middle - Site Timber Operations	30	0	0%	03-Dec-15	13-Jan-16	Carolina Forest Middle - Site Timber Operations
A1830	Myrtle Beach Middle - Demo	35	0	0%	17-Dec-15	03-Feb-16	Myrtle Beach Middle - Demo
A1780	Socastee Elementary - Site Timber Operations	25	0	0%	24-Dec-15	27-Jan-16	Socastee Elementary - Site Timber Operations
A1750	Structural Shop Drawings - Steel/Precast	15	0	0%	07-Jan-16	27-Jan-16	Structural Shop Drawings - Steel/Precast
A1790	St James Intermediate - Site Prep & Building Pad	30	0	0%	07-Jan-16	17-Feb-16	St James Intermediate - Site Prep & Building Pad
A1870	Carolina Forest Middle - Site Prep and Building Pad	30	0	0%	07-Jan-16	17-Feb-16	Carolina Forest Middle - Site Prep and Building Pad
A1760	Steel Fab	25	0	0%	28-Jan-16	02-Mar-16	Steel Fab
A1770	Precast Fab	25	0	0%	28-Jan-16	02-Mar-16	Precast Fab

☐ Actual Work ☐ Critical Remaining Work ☐ Summary
☐ Remaining Work ☐ Milestone



Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 3:10 PM
To: Keith R. Powell
Subject: HCS contracts

Follow Up Flag: Follow up
Flag Status: Completed

Keith,

Would it make sense if you set up a meeting for next Thursday where we go to Horry and I and the owner sign contracts?

I am told, by subcontractors, that the normal procedure in Horry County is that if applications for payment are received by the 23rd you get paid by the 10th. You might want to confirm that the 23rd is there magic date for applications for payment.

Here is the info for the remaining blanks:

A2.2- Keith these are the days for each project per the schedule in our proposal:

Carolina Forest MS
Myrtle Beach MS
St James IS
Socastee ES
Socastee MS

Article A.4:

Carolina Forest Middle School:
Superintendent: Mark Branch
Project Manager: Charlie Rollins
Assistant Superintendent: Gary Pipkin

Myrtle Beach Middle School:
Superintendent: Ed Bruce
Project Manager: Rusty Woolard
Assistant Superintendent: Ray Carrino

St. James Intermediate:
Superintendent: Randall Jernigan
Project Manager: Steve Bond
Assistant Superintendent: Rodney Nichols

Socastee ES:
Superintendent: Dale McCoy
Project Manager: Mike Dickman
Assistant Superintendent: David Isham

Socastee Middle School:
Superintendent: Phil Asslynn

Project Manager: Mike Dickman
Assistant Superintendent: Bob Green

Article A.4.2

SfL+a Architects: Architect, Raleigh NC

Metcon/TA Loving joint venture: General Contractor, Pembroke NC

Article 3.1.5.1

Keith

In addition to the allowances in the RFO, listed below, we have a landscaping allowance of \$200,000 for each school except that we have 250,000 for myrtle beach middle school. Our overhead and profit is outside this number. This is the amount that we can issue to subcontractors for the actual work. If we don't spend all of this HCS will get it back. You can list this in the allowance section or the contingency section, I don't think it matters...

	CF	MB	SJ	SM	SE	total not including
the landscape allowance						
1030.000 - Owner Furniture Allowance	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ 1,250,000	\$ 1,000,000	
1031.000 - Owner Hardware Allowance	\$ 350,000	\$ 350,000	\$ 350,000	\$ 350,000	\$ 250,000	
1032.000 - Owner Controls Allowance	\$ 650,000	\$ 650,000	\$ 650,000	\$ 650,000	\$ 500,000	
1033.000 - Owner Fire Alarm Allowance	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 600,000	
1034.000 - Owner Playground Equip. All			\$ 150,000		\$ 350,000	
1035.000 - Owner Special Inspections All	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	
1036.000 - Owner Commissioning Allo	\$ 125,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 100,000	
1037.000 - Owner Technology Allowance	\$ 1,865,000	\$ 1,865,000	\$ 1,865,000	\$ 1,645,000	\$ 1,275,000	
	\$ 5,390,000	\$ 5,390,000	\$ 5,540,000	\$ 4,920,000	\$ 4,225,000	\$ 25,465,000



Robert W. Ferris, AIA, REFP, LEED AP
CEO/President
SfL+a Architects
333 Fayetteville Street, Suite 225
Raleigh, NC 27601
Cell: 919.610.2251
Fax: 919.573.6355
rferris@sfla.biz
www.sfla.biz

"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 4:57 PM
To: Keith R. Powell
Subject: FW: Horry County School Schedule VS Proposal
Attachments: HCS - 4 School Combo - Schedule 09.01.15.pdf; HCS - 5 School Combo - 11.11.15 REV# 1.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Keith,

I have included the email chain with our project manager so in case I don't fully describe the dates were proposing you will have the benefit of the schedule in his words.

We propose reducing the total duration from 575 days to 566 days in exchange for a bit of grace in how we get there. In our individual schedules, in our proposal, we made a mistake. We scheduled pilings on the wrong school so we corrected that mistake here. We propose you use the "revised" dates below for the contract. As far as Socastee MS goes my ideas are as follows:

Option 1: 547 days from a notice to proceed if pilings are not needed and 566 days if pilings are needed.

Option 2: A schedule will be determined once a site is selected but it is expected that the schedule will approximate the schedule for Socastee Elementary School

Robbie

From: Ryan Parker [mailto:rparker@metconus.com]
Sent: Wednesday, November 11, 2015 7:13 PM
To: Robbie Ferris
Cc: Aaron Thomas; Sam Isham; David Philyaw (dphilyaw@taloving.com); Mike Mitchell (mmitchell@taloving.com); mrichter@taloving.com; rlangston@taloving.com
Subject: RE: Horry County School Schedule VS Proposal

Robbie,

We need to discuss this tomorrow in depth so that everyone is on the same page before you submit to anyone with Horry County or their council.

- Notes
 - St. James and Carolina Forest had the pile activities switched which accounts for the difference in their duration
 - The proposal asked for a schedule for the 4 school combo. An assumption was made that land would be bought and mass grading drawings could be prepared close to or before the 10/5 start date. That didn't happen so the elementary school took the place of the middle school.
- Myrtle Beach Middle School
 - Original 10/5 thru 4/3 - 546
 - Revised 11/19 thru 5/19 - 547
- St. James Intermediate School
 - Original 10/5 thru 3/10 - 522
 - Revised 11/19 thru 6/2 - 561
- Carolina Forest Middle School

- Original 10/5 thru 4/25 - 568
 - Revised 11/19 thru 5/5 - 533
- Socastee Elementary
 - Original 10/5 thru 5/2 - 575
 - Revised 11/19 thru 6/7 - 566
- Socastee Middle School
 - No land at time of original subcontract
 - Original 4 School combo schedule didn't include elementary.

With Regards

Ryan Parker | Senior Project Manager
Metcon, Inc. | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372
 office 910.521.8013 | mobile 910.374.2766 | email:rparker@metconus.com
[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)



PEMBROKE | RALEIGH | CHARLOTTE | COLUMBIA

From: Robbie Ferris [<mailto:RFerris@sfla.biz>]
Sent: Wednesday, November 11, 2015 4:24 PM
To: Ryan Parker
Cc: Aaron Thomas; Sam Isham; David Philyaw (dphilyaw@taloving.com); Mike Mitchell (mmitchell@taloving.com); mrichter@taloving.com; rlangston@taloving.com
Subject: RE: Horry County School Schedule VS Proposal

- Ryan, We need the days for each individual project since we have 5 contracts. This would be the days "From the Schedule submitted with the proposal"

From: Ryan Parker [<mailto:rparker@metconus.com>]
Sent: Wednesday, November 11, 2015 2:03 PM
To: Robbie Ferris
Cc: Aaron Thomas; Sam Isham; David Philyaw (dphilyaw@taloving.com); Mike Mitchell (mmitchell@taloving.com); mrichter@taloving.com; rlangston@taloving.com
Subject: Horry County School Schedule VS Proposal

Robbie,

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Ryan Parker | Senior Project Manager

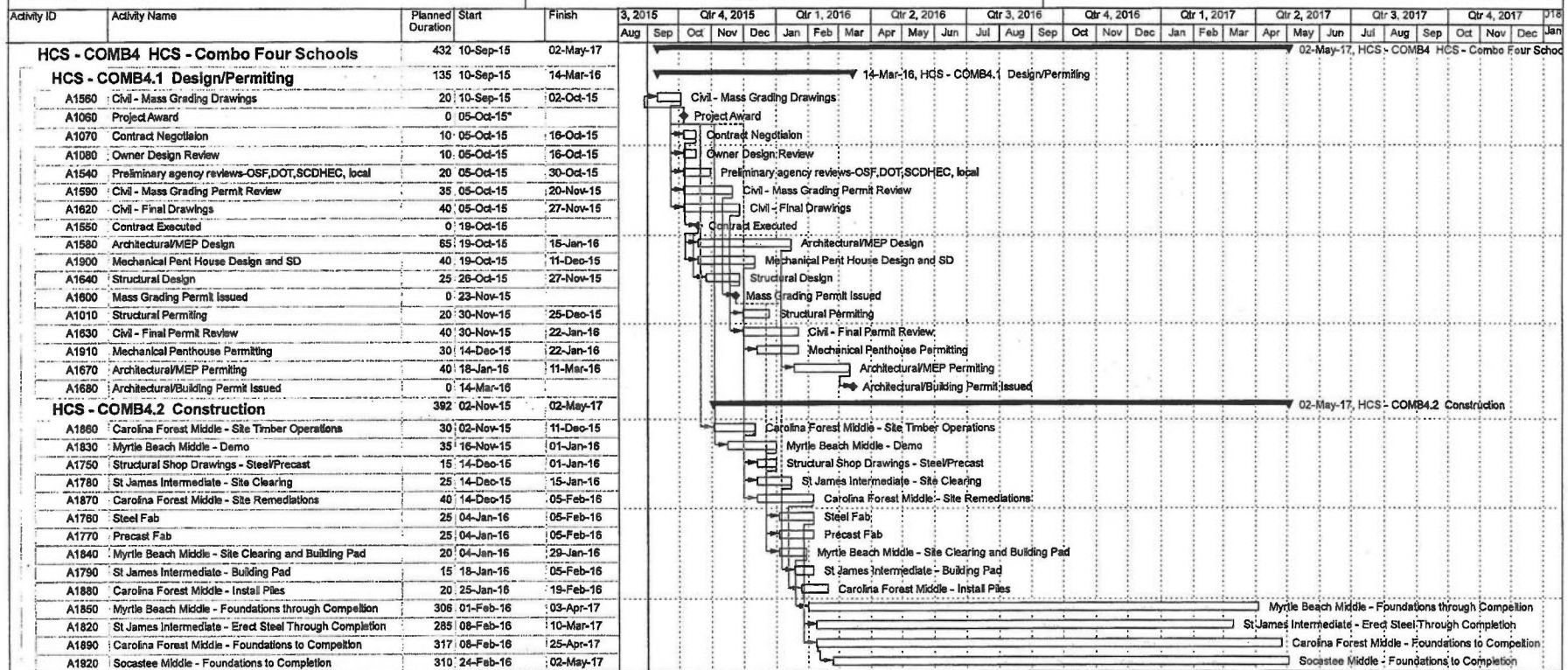
Metcon, Inc. | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372

office 910.521.8013 | mobile 910.374.2766 | email:rparker@metconus.com

[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)



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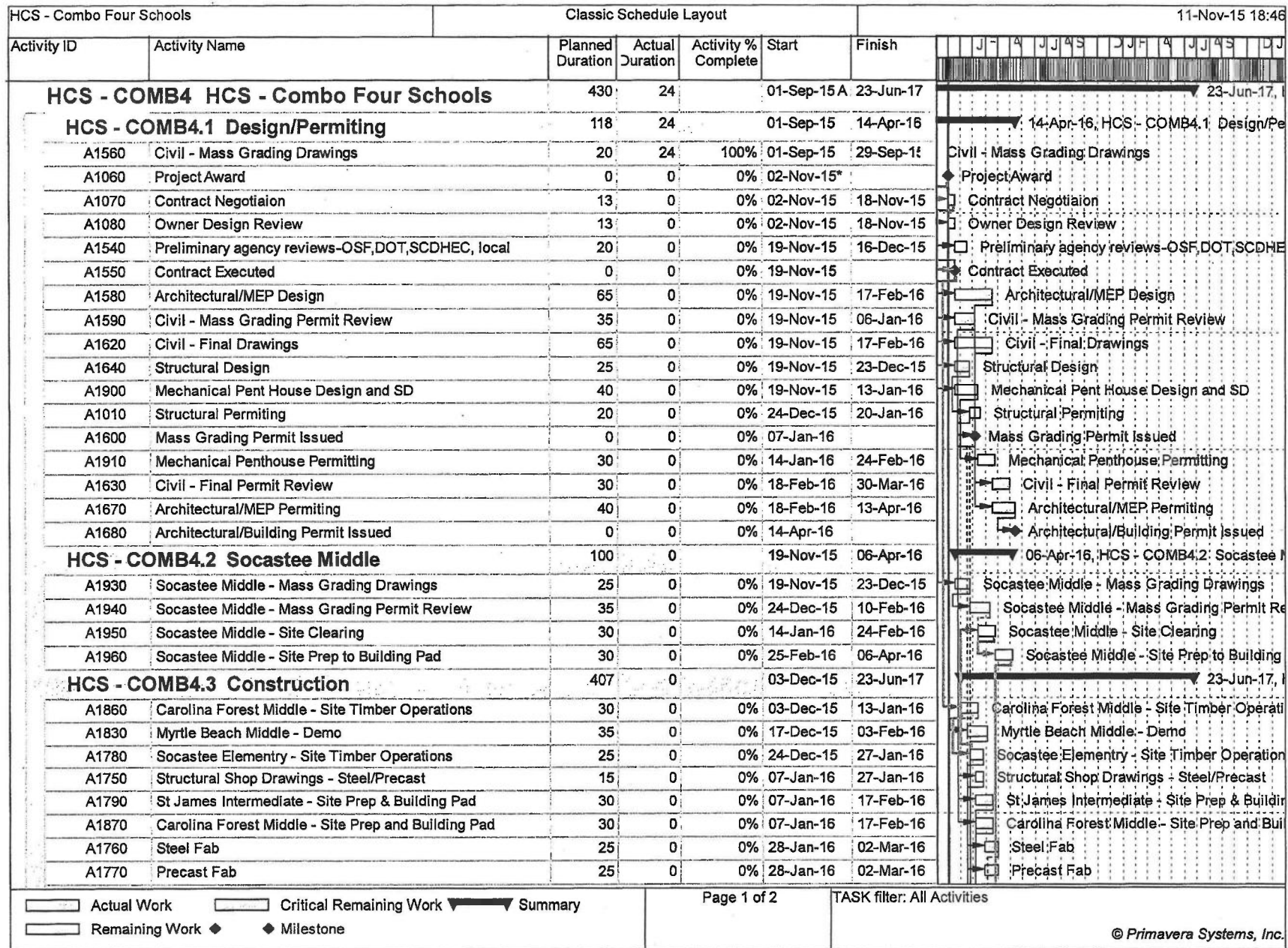


Actual Work
 Critical Remaining Work
 Summary
 Remaining Work
 Milestone

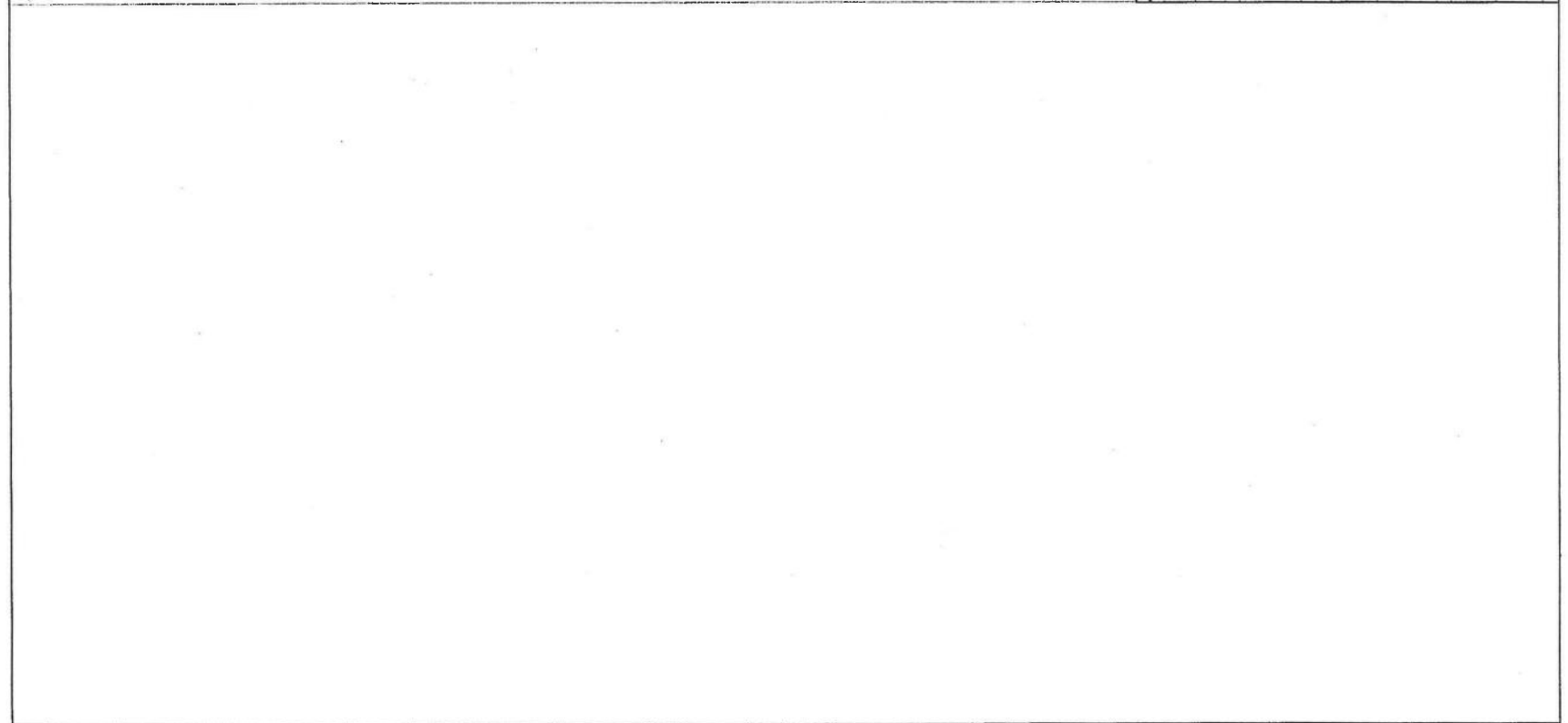
Page 1 of 1

TASK filter: All Activities

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Activity ID	Activity Name	Planned Duration	Actual Duration	Activity % Complete	Start	Finish	J	A	J	J	A	S	J	J	F	A	J	J	A	S	D	J
A1990	Socastee Elementry - Site Prep to Building Pad	30	0	0%	28-Jan-16	09-Mar-16																
A1840	Myrtle Beach Middle - Site Clearing and Building Pad	20	0	0%	04-Feb-16	02-Mar-16																
A1880	St.James Intermediate - Install Piles	20	0	0%	18-Feb-16	16-Mar-16																
A1890	Carolina Forest Middle - Foundations to Completion	317	0	0%	18-Feb-16	05-May-17																
A1850	Myrtle Beach Middle - Foundations through Completion	317	0	0%	03-Mar-16	19-May-17																
A1980	Socastee Elementry - Building Piles	20	0	0%	10-Mar-16	06-Apr-16																
A1820	St James Intermediate - Foundations through Completion	317	0	0%	17-Mar-16	02-Jun-17																
A1920	Socastee Elementry - Foundations to Completion	305	0	0%	07-Apr-16	07-Jun-17																
A1970	Socastee Middle - Foundations through Completion	317	0	0%	07-Apr-16	23-Jun-17																



Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Wednesday, November 04, 2015 9:03 AM
To: Keith R. Powell
Subject: Fwd: 1415-91 Notices of Intent to Award
Attachments: ATT00001.htm; 1415-91 NOI CFM.pdf; ATT00002.htm; 1415-91 NOI MBM.pdf; ATT00003.htm; 1415-91 NOI SES.pdf; ATT00004.htm; 1415-91 NOI SJI.pdf; ATT00005.htm; 1415-91 NOI SMS.pdf; ATT00006.htm

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Sent from my iPhone

Begin forwarded message:

From: Ara Heinz <AHeinz@horrycountyschools.net>
Date: November 3, 2015 at 5:14:12 PM EST
To: Robbie Ferris <RFerris@sfla.biz>, "rferris@firstfloor.biz" <rferris@firstfloor.biz>
Cc: Danielle Davis <ddavis@sfla.biz>
Subject: 1415-91 Notices of Intent to Award

Mr. Ferris,

Please find attached the Notices of Intent to Award from Horry County Schools for the Design-Build Delivery of New School Facilities projects (# 1415-91). Barring any protests or issues with providing the information listed in the NOI, the official contract could be executed and go into effect on November 19, 2015. (The NOI's have also been uploaded to our website at <http://apps.hcs.k12.sc.us/apps/protrac/>.)

I am sure that either our attorneys or someone from the District will be in contact with you soon to discuss the next steps, but if you have any questions or concerns about documents, communications, procedures, etc., please do not hesitate to contact me.

Thank you for participating in this solicitation! We look forward to working with you and your team on this project!

Regards,
Ara

Ara Heinz | Procurement Services | P: 843/488-6930
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526
Website: Procurement.horrycountyschools.net

NOTICE OF INTENT TO AWARD



BID NUMBER: 1415-91	PROJECT NAME: Design-Build Delivery of New School Facilities (New Carolina Forest Middle School)		
INTENT TO AWARD A CONTRACT TO: Firstfloor Energy Positive, LLC 333 Fayetteville Street, Ste. 225 Raleigh, NC 27601	INVITATION FOR BIDS DATE: June 24, 2015		PROTEST PERIOD END DATE: November 18, 2015
	NOTICE OF INTENT DATE: November 3, 2015		
TOTAL CONTRACT PRICE ACCEPTED BY THE DISTRICT FOR AWARD: \$ 45,930,227.00			

NOTICE TO Awardee:

Horry County Schools (the District) has considered the bid submitted by the Offeror listed above for the above described project in response to its *Request for Proposals*. That Offeror is, hereby, notified that it is the District's intention to award a contract for the total contract price indicated above provided that Offeror is found by the District to meet all requirements of responsibility as indicated in the *Proposal Instructions* and in accordance with the District's Procurement Code.

CAUTION: No work should begin nor costs incurred associated with the contract prior to the commencement of the project indicated on the *Notice to Proceed* issued after the *Notice of Intent to Award* period has ended. Horry County Schools assumes no liability for the expenses incurred prior to that commencement date.

A pre-construction conference may be scheduled by the District's Construction Management Office prior to the commencement of the project provided no protests are submitted to the District before the protest end date stated above. You are required to execute or have executed and returned to the District the following documents no later than the scheduled pre-construction conference or within ten (10) days from the date of the *Notice of Intent to Award* unless otherwise stated:

- a) AIA Document A141 – 2014 (2 originals)
- b) AIA Document A141 – 2014 Exhibit A (2 originals)
- c) AIA Document A141 – 2014 Exhibit B (2 originals)
- d) AIA Document A312 – 2010 (2 originals)
- e) Detailed Schedule of Values (CSI Breakdown)
- f) Detailed Project Schedule
- g) Copy of the Contractor's business license in the jurisdiction where the work is being performed (if required).

Failure to execute and return the above documents no later than the scheduled pre-construction conference or within ten (10) days from the date of the *Notice of Intent to Award* shall indicate your abandonment of all rights under this *Notice of Intent to Award*. The District shall be entitled to such other rights as may be granted by law.

NOTICE TO ALL OTHER OFFERORS:

Any Bidder who feels aggrieved because of this *Notice of Intent to Award* has a right to protest and to present an appeal in accordance with the District's Procurement Code. Any protest must be submitted to the District's Procurement Officer listed in the *Request for Proposals*, in writing.

HORRY COUNTY SCHOOLS

By:

John K. Gardner
Chief Financial Officer

NOTICE OF INTENT TO AWARD



BID NUMBER: 1415-91	PROJECT NAME: Design-Build Delivery of New School Facilities (New Myrtle Beach Middle School)		
INTENT TO AWARD A CONTRACT TO: Firstfloor Energy Positive, LLC 333 Fayetteville Street, Ste. 225 Raleigh, NC 27601	INVITATION FOR BIDS DATE: June 24, 2015		PROTEST PERIOD END DATE: November 18, 2015
	NOTICE OF INTENT DATE: November 3, 2015		
TOTAL CONTRACT PRICE ACCEPTED BY THE DISTRICT FOR AWARD: \$ 46,485,102.00			

NOTICE TO Awardee:

Horry County Schools (the District) has considered the bid submitted by the Offeror listed above for the above described project in response to its *Request for Proposals*. That Offeror is, hereby, notified that it is the District's intention to award a contract for the total contract price indicated above provided that Offeror is found by the District to meet all requirements of responsibility as indicated in the *Proposal Instructions* and in accordance with the District's Procurement Code.

CAUTION: No work should begin nor costs incurred associated with the contract prior to the commencement of the project indicated on the *Notice to Proceed* issued after the *Notice of Intent to Award* period has ended. Horry County Schools assumes no liability for the expenses incurred prior to that commencement date.

A pre-construction conference may be scheduled by the District's Construction Management Office prior to the commencement of the project provided no protests are submitted to the District before the protest end date stated above. You are required to execute or have executed and returned to the District the following documents no later than the scheduled pre-construction conference or within ten (10) days from the date of the *Notice of Intent to Award* unless otherwise stated:

- a) AIA Document A141 - 2014 (2 originals)
- b) AIA Document A141 - 2014 Exhibit A (2 originals)
- c) AIA Document A141 - 2014 Exhibit B (2 originals)
- d) AIA Document A312 - 2010 (2 originals)
- e) Detailed Schedule of Values (CSI Breakdown)
- f) Detailed Project Schedule
- g) Copy of the Contractor's business license in the jurisdiction where the work is being performed (if required).

Failure to execute and return the above documents no later than the scheduled pre-construction conference or within ten (10) days from the date of the *Notice of Intent to Award* shall indicate your abandonment of all rights under this *Notice of Intent to Award*. The District shall be entitled to such other rights as may be granted by law.

NOTICE TO ALL OTHER OFFERORS:

Any Bidder who feels aggrieved because of this *Notice of Intent to Award* has a right to protest and to present an appeal in accordance with the District's Procurement Code. Any protest must be submitted to the District's Procurement Officer listed in the *Request for Proposals*, in writing.

HORRY COUNTY SCHOOLS

By: 

John K. Gardner
Chief Financial Officer

NOTICE OF INTENT TO AWARD



BID NUMBER: 1415-91	PROJECT NAME: Design-Build Delivery of New School Facilities (New Socastee Elementary School)		
INTENT TO AWARD A CONTRACT TO: Firstfloor Energy Positive, LLC 333 Fayetteville Street, Ste. 225 Raleigh, NC 27601		INVITATION FOR BIDS DATE: June 24, 2015	
		NOTICE OF INTENT DATE: November 3, 2015	PROTEST PERIOD END DATE: November 18, 2015
TOTAL CONTRACT PRICE ACCEPTED BY THE DISTRICT FOR AWARD: \$ 37,953,991.00			

NOTICE TO Awardee:

Horry County Schools (the District) has considered the bid submitted by the Offeror listed above for the above described project in response to its *Request for Proposals*. That Offeror is, hereby, notified that it is the District's intention to award a contract for the total contract price indicated above provided that Offeror is found by the District to meet all requirements of responsibility as indicated in the *Proposal Instructions* and in accordance with the District's Procurement Code.

CAUTION: No work should begin nor costs incurred associated with the contract prior to the commencement of the project indicated on the *Notice to Proceed* issued after the *Notice of Intent to Award* period has ended. Horry County Schools assumes no liability for the expenses incurred prior to that commencement date.

A pre-construction conference may be scheduled by the District's Construction Management Office prior to the commencement of the project provided no protests are submitted to the District before the protest end date stated above. You are required to execute or have executed and returned to the District the following documents no later than the scheduled pre-construction conference or within ten (10) days from the date of the *Notice of Intent to Award* unless otherwise stated:

- a) AIA Document A141 – 2014 (2 originals)
- b) AIA Document A141 – 2014 Exhibit A (2 originals)
- c) AIA Document A141 – 2014 Exhibit B (2 originals)
- d) AIA Document A312 – 2010 (2 originals)
- e) Detailed Schedule of Values (CSI Breakdown)
- f) Detailed Project Schedule
- g) Copy of the Contractor's business license in the jurisdiction where the work is being performed (if required).

Failure to execute and return the above documents no later than the scheduled pre-construction conference or within ten (10) days from the date of the *Notice of Intent to Award* shall indicate your abandonment of all rights under this *Notice of Intent to Award*. The District shall be entitled to such other rights as may be granted by law.

NOTICE TO ALL OTHER OFFERORS:

Any Bidder who feels aggrieved because of this *Notice of Intent to Award* has a right to protest and to present an appeal in accordance with the District's Procurement Code. Any protest must be submitted to the District's Procurement Officer listed in the *Request for Proposals*, in writing.

HORRY COUNTY SCHOOLS

By:

John K. Gardner
Chief Financial Officer

NOTICE OF INTENT TO AWARD



BID NUMBER: 1415-91	PROJECT NAME: Design-Build Delivery of New School Facilities (New St. James Intermediate School)		
INTENT TO AWARD A CONTRACT TO: Firstfloor Energy Positive, LLC 333 Fayetteville Street, Ste. 225 Raleigh, NC 27601	INVITATION FOR BIDS DATE: June 24, 2015		PROTEST PERIOD END DATE: November 18, 2015
	NOTICE OF INTENT DATE: November 3, 2015		
TOTAL CONTRACT PRICE ACCEPTED BY THE DISTRICT FOR AWARD: \$ 47,742,333.00			

NOTICE TO AWARDEE:

Horry County Schools (the District) has considered the bid submitted by the Offeror listed above for the above described project in response to its *Request for Proposals*. That Offeror is, hereby, notified that it is the District's intention to award a contract for the total contract price indicated above provided that Offeror is found by the District to meet all requirements of responsibility as indicated in the *Proposal Instructions* and in accordance with the District's Procurement Code.

CAUTION: No work should begin nor costs incurred associated with the contract prior to the commencement of the project indicated on the *Notice to Proceed* issued after the *Notice of Intent to Award* period has ended. Horry County Schools assumes no liability for the expenses incurred prior to that commencement date.

A pre-construction conference may be scheduled by the District's Construction Management Office prior to the commencement of the project provided no protests are submitted to the District before the protest end date stated above. You are required to execute or have executed and returned to the District the following documents no later than the scheduled pre-construction conference or within ten (10) days from the date of the *Notice of Intent to Award* unless otherwise stated:

- a) AIA Document A141 – 2014 (2 originals)
- b) AIA Document A141 – 2014 Exhibit A (2 originals)
- c) AIA Document A141 – 2014 Exhibit B (2 originals)
- d) AIA Document A312 – 2010 (2 originals)
- e) Detailed Schedule of Values (CSI Breakdown)
- f) Detailed Project Schedule
- g) Copy of the Contractor's business license in the jurisdiction where the work is being performed (if required).

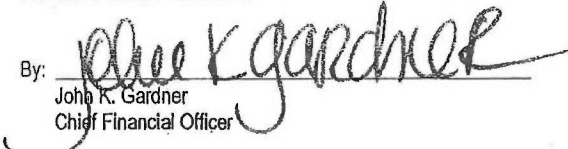
Failure to execute and return the above documents no later than the scheduled pre-construction conference or within ten (10) days from the date of the *Notice of Intent to Award* shall indicate your abandonment of all rights under this *Notice of Intent to Award*. The District shall be entitled to such other rights as may be granted by law.

NOTICE TO ALL OTHER OFFERORS:

Any Bidder who feels aggrieved because of this *Notice of Intent to Award* has a right to protest and to present an appeal in accordance with the District's Procurement Code. Any protest must be submitted to the District's Procurement Officer listed in the *Request for Proposals*, in writing.

HORRY COUNTY SCHOOLS

By:


John K. Gardner
Chief Financial Officer

NOTICE OF INTENT TO AWARD



BID NUMBER: 1415-91	PROJECT NAME: Design-Build Delivery of New School Facilities (New Socastee Middle School)		
INTENT TO AWARD A CONTRACT TO: Firstfloor Energy Positive, LLC 333 Fayetteville Street, Ste. 225 Raleigh, NC 27601	INVITATION FOR BIDS DATE: June 24, 2015		PROTEST PERIOD END DATE: November 18, 2015
	NOTICE OF INTENT DATE: November 3, 2015		
TOTAL CONTRACT PRICE ACCEPTED BY THE DISTRICT FOR AWARD: \$ 42,488,116.00			

NOTICE TO Awardee:

Horry County Schools (the District) has considered the bid submitted by the Offeror listed above for the above described project in response to its *Request for Proposals*. That Offeror is, hereby, notified that it is the District's intention to award a contract for the total contract price indicated above provided that Offeror is found by the District to meet all requirements of responsibility as indicated in the *Proposal Instructions* and in accordance with the District's Procurement Code.

CAUTION: No work should begin nor costs incurred associated with the contract prior to the commencement of the project indicated on the *Notice to Proceed* issued after the *Notice of Intent to Award* period has ended. Horry County Schools assumes no liability for the expenses incurred prior to that commencement date.

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HORRY COUNTY SCHOOLS

By: _____

John K. Gardner
Chief Financial Officer

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Thursday, November 05, 2015 10:50 AM
To: Keith R. Powell
Subject: Horry

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Any chance we can get owner to sign early site packages so we can formally submit

Sent from my iPhone

Sheri L. Wainscott

From: Keith R. Powell
Sent: Friday, November 06, 2015 10:25 AM
To: Robbie Ferris
Subject: RE: Horry

Follow Up Flag: Follow up
Flag Status: Flagged

Does not sound like they are interested.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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-----Original Message-----

From: Robbie Ferris [<mailto:RFerris@sfla.biz>]
Sent: Thursday, November 05, 2015 10:50 AM
To: Keith R. Powell
Subject: Horry

Any chance we can get owner to sign early site packages so we can formally submit

Sent from my iPhone

Sheri L. Wainscott

From: Keith R. Powell
Sent: Wednesday, November 11, 2015 10:54 AM
To: Robbie Ferris
Subject: RE: Hcs new schools early site packages

Follow Up Flag: Follow up
Flag Status: Flagged

Sentiment is not to do anything unusual. You should build your schedules from the 19th I guess, or maybe the 20th if that is when you will have business license, insurance and bonds.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
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-----Original Message-----

From: Robbie Ferris [<mailto:RFerris@sfla.biz>]
Sent: Monday, November 09, 2015 5:18 PM
To: Keith R. Powell; Ara Heinz <AHeinz@horrycountyschools.net>
Cc: Danielle Davis; Mike Wawrzyniak; Ryan Parker; JOHN H.RICHARDS
Subject: Hcs new schools early site packages

Keith/ Ara,

We would very much like to submit the early site packages for agency approval as soon as possible. Every day gained on the front end of the project is a day gained at the back end of the project. Please consider our request to have the owner sign the early site package applications so we can submit them sooner than later. We fully understand that our submission of these early site packages would be done at risk.

Thank you for your consideration of this request.

Robbie

Sent from my iPhone

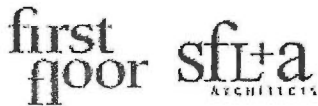
Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Wednesday, November 11, 2015 5:01 PM
To: Keith R. Powell
Subject: Firstfloor

Follow Up Flag: Follow up
Flag Status: Flagged

Keith,
Firstfloor energy positive has 3 member managers. This allows any of the 3 managers to sign for the company. I will be the primary
Richard Green and Eric Lindstrom are also member managers and can sign for the company. Apparently some smart lawyer suggested this so that documents could still be signed if someone goes on vacation etc...Vacations are not common occurrences with me so it will not likely be an issue.

Robbie



Robert W. Ferris, AIA, REFP, LEED AP
CEO/President
333 Fayetteville Street, Suite 225
Raleigh, NC 27601
Cell: 919.610.2251
Fax: 919.573.6355
rferris@sfla.biz
www.sfla.biz

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Wednesday, November 11, 2015 9:08 PM
To: Keith R. Powell
Subject: HCS contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Keith,

I might have been looking at the wrong document but it looks like you made a lot of changes to the contract issued in the RFP. Most of the changes are fine but here are a few thoughts.

Our insurance carriers are still reviewing the contract and I will get you their comments, if any asap:

- 1.1.3-The projects physical characteristics should refer back to the design builders proposal
- 1.1.9- This should also reference the design builders proposal
- 1.4.1-The design build proposal should be attached to make it a part of the design build documents
- 2.1- I would prefer to leave this article in the contract. Our team members relied on this provision being in the contract when developing the proposal.
- 2.1.4.1- With this project moving as fast as it is supposed to move, paying within 30 days is far more reasonable than 45 days. Is there a reason HCS can't pay within 45 days. We usually try to pay contractors within 7 days on projects that we own and it is serious motivator. When you pay fast you have lots of leverage with subs.
- 2.1.4.1-Some interest should be paid on late payments. 1% per month is normal. Do they have problems with paying their bills on time?
- 5.7.2- Line 5 and line 7 - can we change 14 days to 7 days – this job needs to move fast.
- 5.14.3- Why would the owner not be responsible to the DB if the owners consultant damage the work. For example- the owners technology contractor destroys the ceilings the day before the building opens. Why should the owner not be responsible to the design builder in this case?
- 6.3.7- Can we add language that clarifies that the post occupancy services will not delay closeout and release of retainage.
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- 9.7 – Given the speed of this project can we change this back to 7 days
- 10.3- According to the addendum I recall that the owner is responsible for removal of Haz Mat at MB middle. Should we acknowledge this in the contract so that everyone is clear about this?
- 12.3.2- I don't think it's reasonable for the owner to be able to terminate the contract and then use the construction documents and, further, if there is a problem make the Design Builder and Architect responsible for that problem. I would leave this "as is" in the original contract.
- 13.2.4.3- Why is it not fair for the DB to make a reasonable profit if the owner cancels the contract. We could define what reasonable is if you would be more comfortable.
- A.3.1.6- Design Builders assumptions and clarifications:
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- A.4.1.and A.4.2 We will get you the info to fill in blanks asap.



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"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

Sheri L. Wainscott

From: Keith R. Powell
Sent: Thursday, November 12, 2015 10:12 AM
To: Robbie Ferris
Subject: RE: HCS contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks. I ran it in "variance check" mode this time, so as I told your colleagues, it looks quite different from the earlier version but I didn't actually change all that much in the text. I think a lot of these were in the one published in the addendum, but that does not mean we cannot make reasonable adjustments. However I'll have to do more discussions with HCS about anything that changes from the original that is not just filling in blanks.

Keith R. Powell
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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Thursday, November 12, 2015 5:20 PM
To: Keith R. Powell
Subject: Horry county schools

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith

This relates back to Our proposal taking precedent over the RFP. We had additional allowances in our proposal that were not outlined in the RFP. For example we had \$200,000 for landscaping in our proposal.

Sent from my iPhone

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Thursday, November 12, 2015 9:06 PM
To: Keith R. Powell
Subject: Re: HCS contracts
Attachments: image001.png

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Ok

I understand, I will go back and look at my rfp version again

I do think many of my comments would accrue to the benefit of the district

As well as to us

Robbie

Sent from my iPhone

On Nov 12, 2015, at 10:12 AM, Keith R. Powell <kpowell@childs-halligan.net> wrote:

Thanks. I ran it in "variance check" mode this time, so as I told your colleagues, it looks quite different from the earlier version but I didn't actually change all that much in the text. I think a lot of these were in the one published in the addendum, but that does not mean we cannot make reasonable adjustments. However I'll have to do more discussions with HCS about anything that changes from the original that is not just filling in blanks.

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<image001.png>

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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 12:15 PM
To: Keith R. Powell
Subject: Horry allowance

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,

I recall the board approving funds to restore the owner contingency. I assume that contingency will be held outside of our contract, however if we want it inside of our contract for some reason we can do that but we would have to increase The contract amount by the amount of the owner contingency. I am fine with it either way.

Robbie

Sent from my iPhone

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 3:10 PM
To: Keith R. Powell
Subject: HCS contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,

Would it make sense if you set up a meeting for next Thursday where we go to Horry and I and the owner sign contracts?

I am told, by subcontractors, that the normal procedure in Horry County is that if applications for payment are received by the 23rd you get paid by the 10th. You might want to confirm that the 23rd is there magic date for applications for payment.

Here is the info for the remaining blanks:

A2.2- Keith these are the days for each project per the schedule in our proposal:

Carolina Forest MS
Myrtle Beach MS
St James IS
Socastee ES
Socastee MS

Article A.4:

Carolina Forest Middle School:
Superintendent: Mark Branch
Project Manager: Charlie Rollins
Assistant Superintendent: Gary Pipkin

Myrtle Beach Middle School:
Superintendent: Ed Bruce
Project Manager: Rusty Woolard
Assistant Superintendent: Ray Carrino

St. James Intermediate:
Superintendent: Randall Jernigan
Project Manager: Steve Bond
Assistant Superintendent: Rodney Nichols

Socastee ES:
Superintendent: Dale McCoy
Project Manager: Mike Dickman
Assistant Superintendent: David Isham

Socastee Middle School:
 Superintendent: Phil Asslynn
 Project Manager: Mike Dickman
 Assistant Superintendent: Bob Green

Article A.4.2

SfL+a Architects: Architect, Raleigh NC
 Metcon/TA Loving joint venture: General Contractor, Pembroke NC

Article 3.1.5.1

Keith

In addition to the allowances in the RFO, listed below, we have a landscaping allowance of \$200,000 for each school except that we have 250,000 for myrtle beach middle school. Our overhead and profit is outside this number. This is the amount that we can issue to subcontractors for the actual work. If we don't spend all of this HCS will get it back. You can list this in the allowance section or the contingency section, I don't think it matters...

	CF	MB	SJ	SM	SE	total not including
the landscape allowance						
1030.000 - Owner Furniture Allowance	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ 1,250,000	\$ 1,000,000	
1031.000 - Owner Hardware Allowance	\$ 350,000	\$ 350,000	\$ 350,000	\$ 350,000	\$ 250,000	
1032.000 - Owner Controls Allowance	\$ 650,000	\$ 650,000	\$ 650,000	\$ 650,000	\$ 500,000	
1033.000 - Owner Fire Alarm Allowance	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 600,000	
1034.000 - Owner Playground Equip. All			\$ 150,000		\$ 350,000	
1035.000 - Owner Special Inspections All	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	
1036.000 - Owner Commissioning Allo	\$ 125,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 100,000	
1037.000 - Owner Technology Allowance	\$ 1,865,000	\$ 1,865,000	\$ 1,865,000	\$ 1,645,000	\$ 1,275,000	
	\$ 5,390,000	\$ 5,390,000	\$ 5,540,000	\$ 4,920,000	\$ 4,225,000	\$ 25,465,000



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Sheri L. Wainscott

From: Keith R. Powell
Sent: Friday, November 13, 2015 3:42 PM
To: Robbie Ferris
Subject: Re: HCS contracts
Attachments: image002.png

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Not a bad idea. I have morning booked up Thursday but could probably arrive mid afternoon.

Working on the owner rep issue.

Keith R. Powell
Childs & Halligan, P.A.
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On Nov 13, 2015, at 3:10 PM, Robbie Ferris <RFerris@sfla.biz> wrote:

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Superintendent: Randall Jernigan
Project Manager: Steve Bond
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Project Manager: Mike Dickman
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Article A.4.2

SfL+a Architects: Architect, Raleigh NC
Metcon/TA Loving joint venture: General Contractor, Pembroke NC

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Keith

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	CF	MB	SJ	SM	SE	to
tal not including the landscape allowance						
1030.000 - Owner Furniture Allowance	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ 1,250,000	\$ 1,000,000	
1031.000 - Owner Hardware Allowance	\$ 350,000	\$ 350,000	\$ 350,000	\$ 350,000	\$ 250,000	
1032.000 - Owner Controls Allowance	\$ 650,000	\$ 650,000	\$ 650,000	\$ 650,000	\$ 500,000	
1033.000 - Owner Fire Alarm Allowance	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 600,000	
1034.000 - Owner Playground Equip. All			\$ 150,000		\$ 350,000	
1035.000 - Owner Special Inspections All	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	
1036.000 - Owner Commissioning Allo	\$ 125,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 100,000	
1037.000 - Owner Technology Allowance	\$ 1,865,000	\$ 1,865,000	\$ 1,865,000	\$ 1,645,000	\$ 1,275,000	
	\$ 5,390,000	\$ 5,390,000	\$ 5,540,000	\$ 4,920,000	\$ 4,225,000	\$
25,465,000						

<image002.png>

Robert W. Ferris, AIA, REFP, LEED AP

CEO/President
SfL+a Architects
333 Fayetteville Street, Suite 225
Raleigh, NC 27601
Cell: 919.610.2251
Fax: 919.573.6355
rferris@sfla.biz
www.sfla.biz

"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 3:43 PM
To: Keith R. Powell
Subject: Re: HCS contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Ok
Let me know

Sent from my iPhone

On Nov 13, 2015, at 3:42 PM, Keith R. Powell <kpowell@childs-halligan.net> wrote:

Not a bad idea. I have morning booked up Thursday but could probably arrive mid afternoon.

Working on the owner rep issue.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

NOTICE: This e-mail may contain information that is personal and confidential, non-disclosable and protected by attorney-client privilege. If you have received this e-mail in error, this does not constitute permission to examine, copy or distribute the accompanying material. If you receive this message in error, please notify us by telephone as listed above immediately.

On Nov 13, 2015, at 3:10 PM, Robbie Ferris <RFerris@sfla.biz> wrote:

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St James IS

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Socastee MS

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Article A.4.2

SfL+a Architects: Architect, Raleigh NC
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<image002.png>

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 4:57 PM
To: Keith R. Powell
Subject: FW: Horry County School Schedule VS Proposal
Attachments: HCS - 4 School Combo - Schedule 09.01.15.pdf; HCS - 5 School Combo - 11.11.15 REV# 1.pdf

Follow Up Flag: Follow up
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To: Robbie Ferris
Cc: Aaron Thomas; Sam Isham; David Philyaw (dphilyaw@taloving.com); Mike Mitchell (mmitchell@taloving.com); mrichter@taloving.com; rlangston@taloving.com
Subject: RE: Horry County School Schedule VS Proposal

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- Socastee Middle School
 - No land at time of original subcontract
 - Original 4 School combo schedule didn't include elementary.

With Regards

Ryan Parker | Senior Project Manager

Metcon, Inc. | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372
 office 910.521.8013 | mobile 910.374.2766 | email:rparker@metconus.com
[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)



PEMBROKE | RALEIGH | CHARLOTTE | COLUMBIA

From: Robbie Ferris [mailto:RFerris@sfla.biz]

Sent: Wednesday, November 11, 2015 4:24 PM

To: Ryan Parker

Cc: Aaron Thomas; Sam Isham; David Philyaw (dphilyaw@taloving.com); Mike Mitchell (mmitchell@taloving.com); mrichter@taloving.com; rlangston@taloving.com

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With Regards

Ryan Parker | Senior Project Manager

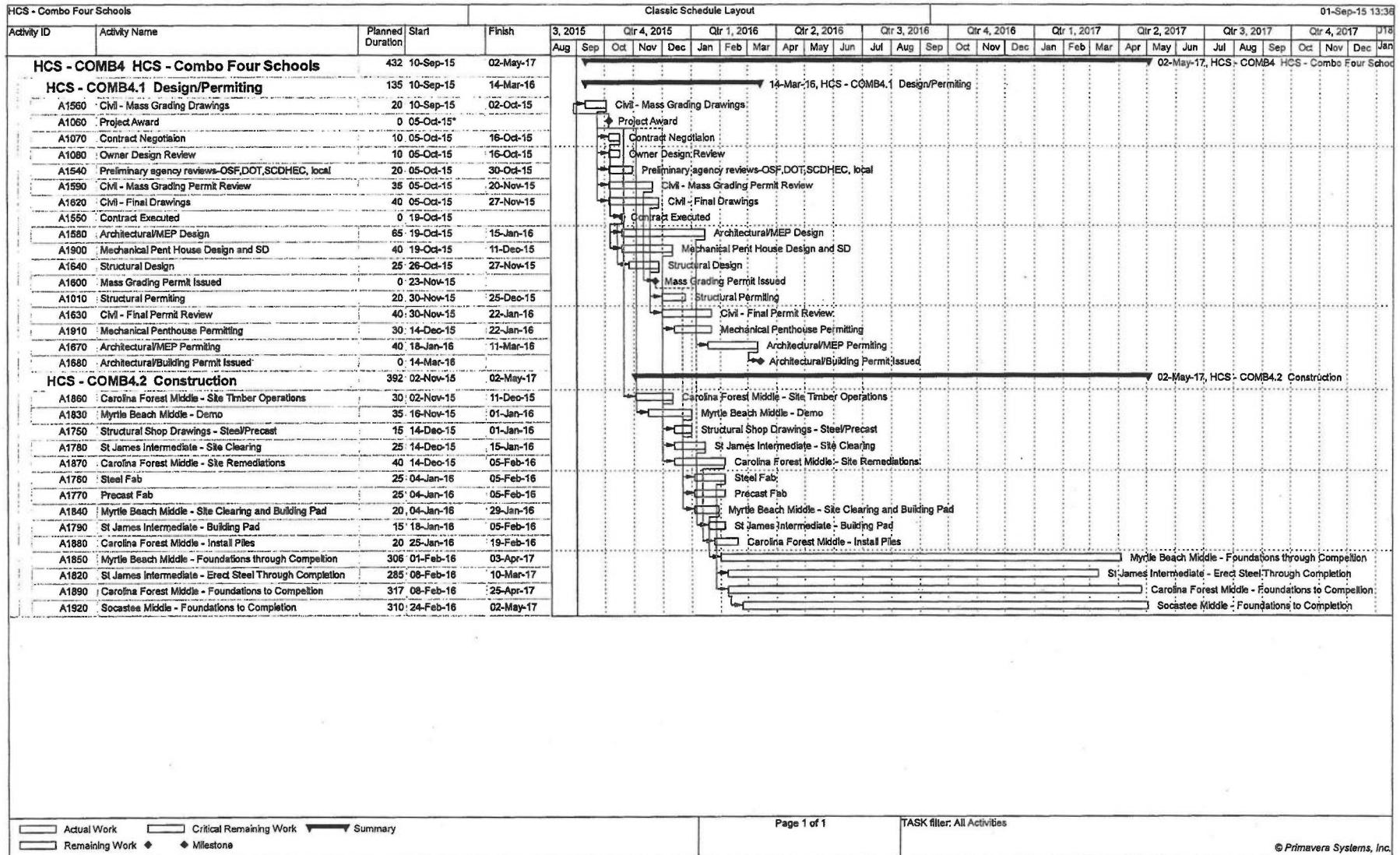
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office 910.521.8013 | mobile 910.374.2766 | email: rparker@metconus.com



[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)



PEMBROKE | RALEIGH | CHARLOTTE | COLUMBIA



Activity ID	Activity Name	Planned Duration	Actual Duration	Activity % Complete	Start	Finish		J	A	J	J	A	S	J	J	F	A	J	J	A	S	D	J
HCS - COMB4 HCS - Combo Four Schools		430	24		01-Sep-15 A	23-Jun-17																	
HCS - COMB4.1 Design/Permitting		118	24		01-Sep-15	14-Apr-16																	
A1560	Civil - Mass Grading Drawings	20	24	100%	01-Sep-15	29-Sep-15																	
A1060	Project Award	0	0	0%	02-Nov-15*																		
A1070	Contract Negotiation	13	0	0%	02-Nov-15	18-Nov-15																	
A1080	Owner Design Review	13	0	0%	02-Nov-15	18-Nov-15																	
A1540	Preliminary agency reviews-OSF,DOT,SCDHEC, local	20	0	0%	19-Nov-15	16-Dec-15																	
A1550	Contract Executed	0	0	0%	19-Nov-15																		
A1580	Architectural/MEP Design	65	0	0%	19-Nov-15	17-Feb-16																	
A1590	Civil - Mass Grading Permit Review	35	0	0%	19-Nov-15	06-Jan-16																	
A1620	Civil - Final Drawings	65	0	0%	19-Nov-15	17-Feb-16																	
A1640	Structural Design	25	0	0%	19-Nov-15	23-Dec-15																	
A1900	Mechanical Pent House Design and SD	40	0	0%	19-Nov-15	13-Jan-16																	
A1010	Structural Permitting	20	0	0%	24-Dec-15	20-Jan-16																	
A1600	Mass Grading Permit Issued	0	0	0%	07-Jan-16																		
A1910	Mechanical Penthouse Permitting	30	0	0%	14-Jan-16	24-Feb-16																	
A1630	Civil - Final Permit Review	30	0	0%	18-Feb-16	30-Mar-16																	
A1670	Architectural/MEP Permitting	40	0	0%	18-Feb-16	13-Apr-16																	
A1680	Architectural/Building Permit Issued	0	0	0%	14-Apr-16																		
HCS - COMB4.2 Socastee Middle		100	0		19-Nov-15	06-Apr-16																	
A1930	Socastee Middle - Mass Grading Drawings	25	0	0%	19-Nov-15	23-Dec-15																	
A1940	Socastee Middle - Mass Grading Permit Review	35	0	0%	24-Dec-15	10-Feb-16																	
A1950	Socastee Middle - Site Clearing	30	0	0%	14-Jan-16	24-Feb-16																	
A1960	Socastee Middle - Site Prep to Building Pad	30	0	0%	25-Feb-16	06-Apr-16																	
HCS - COMB4.3 Construction		407	0		03-Dec-15	23-Jun-17																	
A1860	Carolina Forest Middle - Site Timber Operations	30	0	0%	03-Dec-15	13-Jan-16																	
A1830	Myrtle Beach Middle - Demo	35	0	0%	17-Dec-15	03-Feb-16																	
A1780	Socastee Elementary - Site Timber Operations	25	0	0%	24-Dec-15	27-Jan-16																	
A1750	Structural Shop Drawings - Steel/Precast	15	0	0%	07-Jan-16	27-Jan-16																	
A1790	St James Intermediate - Site Prep & Building Pad	30	0	0%	07-Jan-16	17-Feb-16																	
A1870	Carolina Forest Middle - Site Prep and Building Pad	30	0	0%	07-Jan-16	17-Feb-16																	
A1760	Steel Fab	25	0	0%	28-Jan-16	02-Mar-16																	
A1770	Precast Fab	25	0	0%	28-Jan-16	02-Mar-16																	

☐ Actual Work ☐ Critical Remaining Work  Summary
☐ Remaining Work  Milestone

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A1990	Socastee Elementry - Site Prep to Building Pad	30	0	0%	28-Jan-16	09-Mar-16											
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A1880	St.James Intermediate - Install Piles	20	0	0%	18-Feb-16	16-Mar-16											
A1890	Carolina Forest Middle - Foundations to Completion	317	0	0%	18-Feb-16	05-May-17											
A1850	Myrtle Beach Middle - Foundations through Completion	317	0	0%	03-Mar-16	19-May-17											
A1980	Socastee Elementry - Building Piles	20	0	0%	10-Mar-16	06-Apr-16											
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A1920	Socastee Elementry - Foundations to Completion	305	0	0%	07-Apr-16	07-Jun-17											
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☐ Actual Work ☐ Critical Remaining Work ☐ Summary
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Page 2 of 2

TASK filter: All Activities

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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 3:10 PM
To: Keith R. Powell
Subject: HCS contracts

Follow Up Flag: Follow up
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 office 910.521.8013 | mobile 910.374.2766 | email:rparker@metconus.com
[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)



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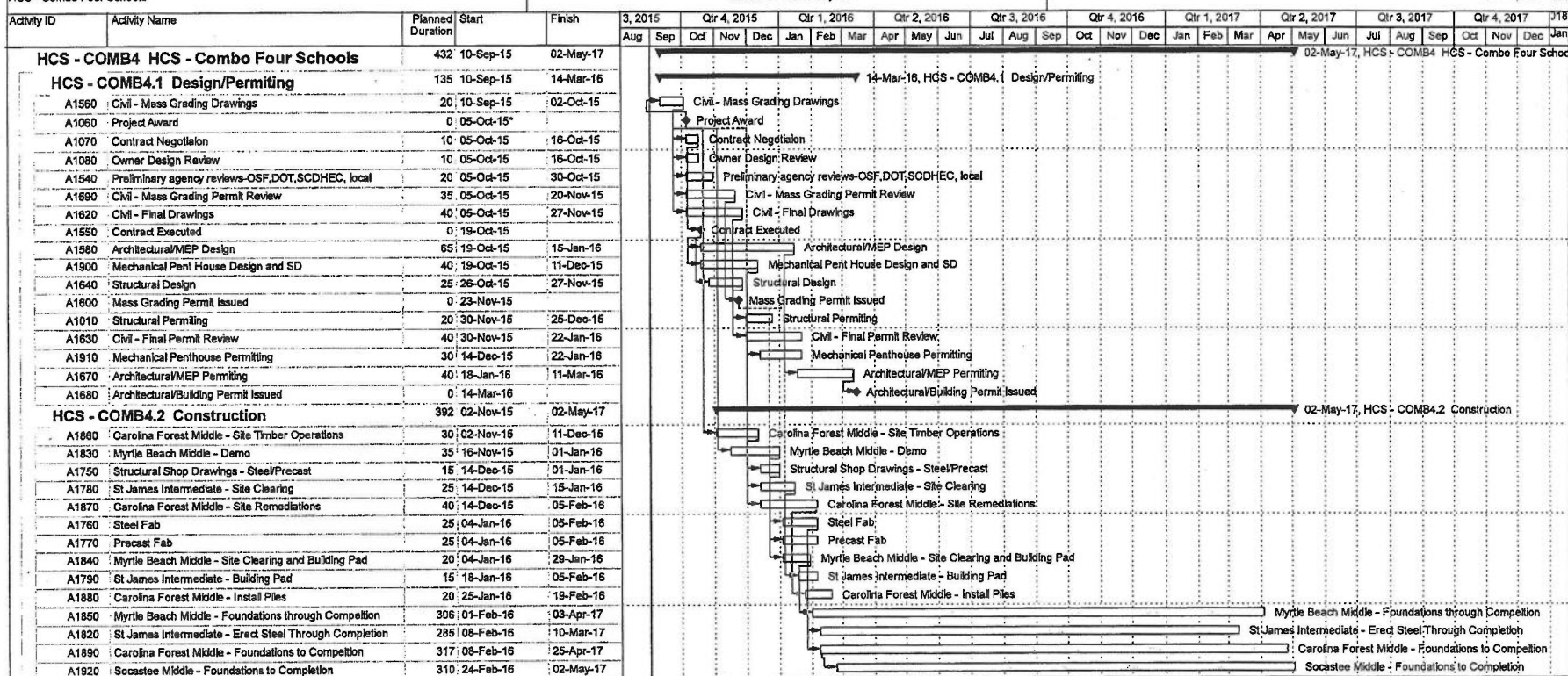
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office 910.521.8013 | mobile 910.374.2766 | email: rparker@metconus.com

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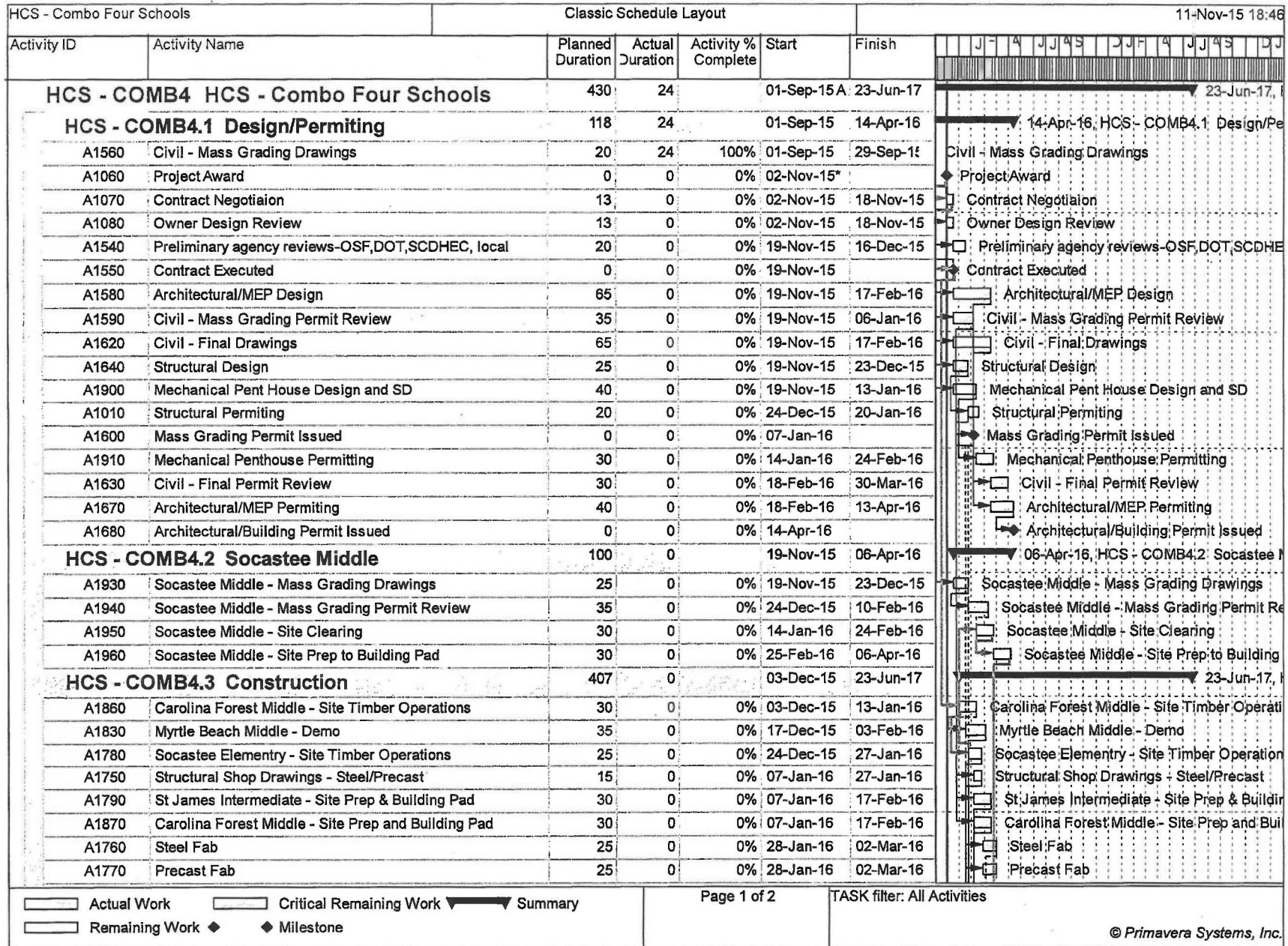


Actual Work Critical Remaining Work Summary
 Remaining Work Milestone

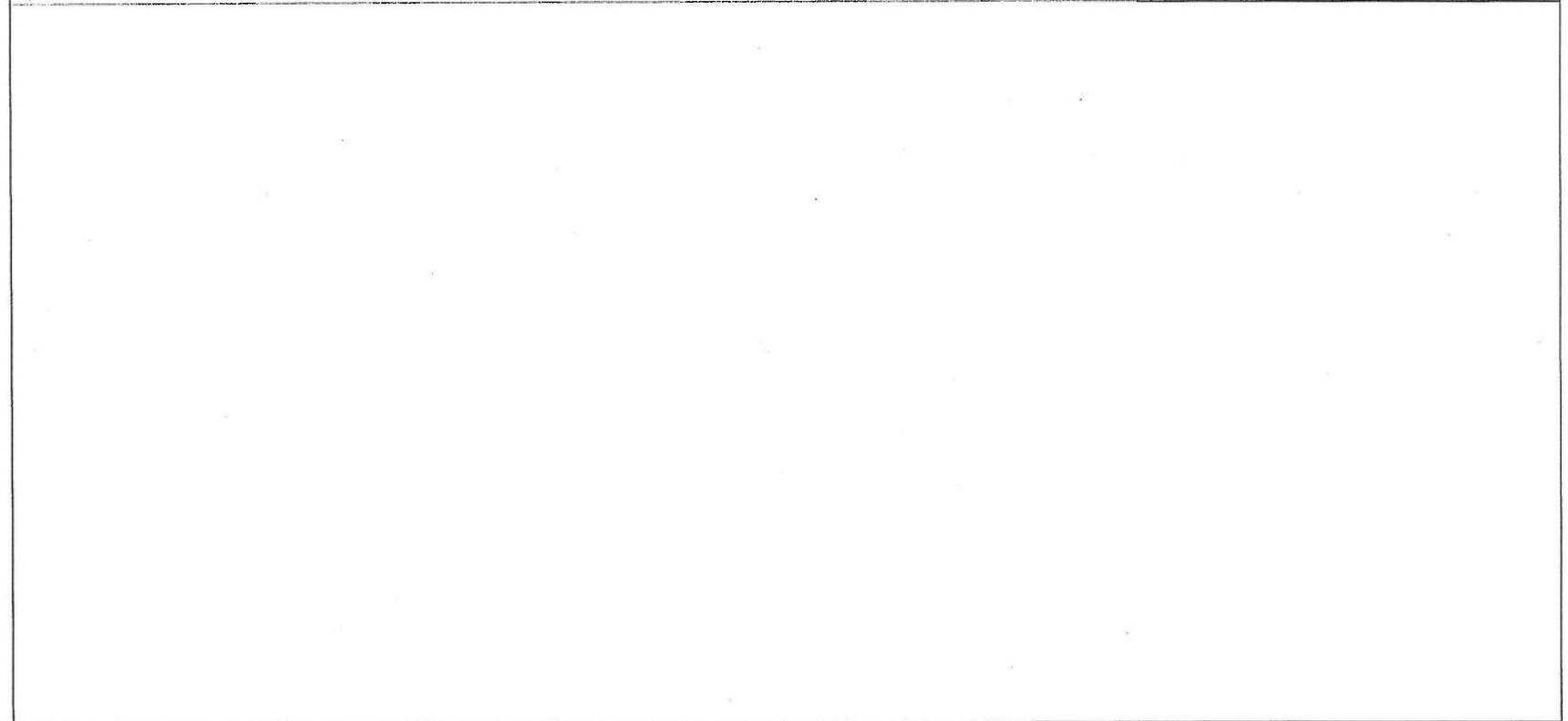
Page 1 of 1

TASK filter: All Activities

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Activity ID	Activity Name	Planned Duration	Actual Duration	Activity % Complete	Start	Finish	J	J	A	J	J	A	S	J	J	F	A	J	J	A	S	J	J
A1990	Socastee Elementry - Site Prep to Building Pad	30	0	0%	28-Jan-16	09-Mar-16																	
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A1880	St.James Intermediate - Install Piles	20	0	0%	18-Feb-16	16-Mar-16																	
A1890	Carolina Forest Middle - Foundations to Completion	317	0	0%	18-Feb-16	05-May-17																	
A1850	Myrtle Beach Middle - Foundations through Completion	317	0	0%	03-Mar-16	19-May-17																	
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A1820	St James Intermediate - Foundations through Completion	317	0	0%	17-Mar-16	02-Jun-17																	
A1920	Socastee Elementry - Foundations to Completion	305	0	0%	07-Apr-16	07-Jun-17																	
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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Tuesday, November 17, 2015 7:43 AM
To: Keith R. Powell
Subject: Hcs

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith

Can you send the latest version of the contract for review Robbie

Sent from my iPhone

Sheri L. Wainscott

From: Keith R. Powell
Sent: Tuesday, November 17, 2015 8:18 AM
To: Robbie Ferris
Subject: Re: Hcs

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

I will later this morning. Have not had any commentary from owner yet on any of the last 2 drafts and I am trying again this morning.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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> On Nov 17, 2015, at 7:43 AM, Robbie Ferris <RFerris@sfla.biz> wrote:
>
> Keith
> Can you send the latest version of the contract for review
> Robbie
>
> Sent from my iPhone

Sheri L. Wainscott

From: Keith R. Powell
Sent: Tuesday, November 17, 2015 9:59 AM
To: Robbie Ferris (RFerris@sfla.biz)
Cc: William F. Halligan
Subject: RE: Hcs
Attachments: 673757_2 141 main - Checked Draft - (1)(1).pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

141 checked draft attached. Not confirmed by owner yet.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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-----Original Message-----

From: Keith R. Powell
Sent: Tuesday, November 17, 2015 9:48 AM
To: Robbie Ferris (RFerris@sfla.biz); Mark Wolfe; Ara Heinz (AHeinz@horrycountyschools.net); John Gardner; Kenneth Generette; rmaxey@horrycountyschools.net
Cc: William F. Halligan
Subject: RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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AIA®

Document A141™ – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the 19th day of November in the year two thousand fifteen (2015).

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.

335 Four Mile Rd | PO Box 260005

Conway, SC 29528

District Office Phone 843.488.6700

and the Design-Builder:

(Name, legal status, address and other information)

FIRSTFLOOR ENERGY POSITIVE LLC,

333 Fayetteville St., Suite 225

Raleigh, NC 27601

for the following Project:

(Name, location and detailed description)

New Carolina Forest Middle School

(per Owner's Request for Proposals No. 1415-91)

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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5	WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
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TABLE OF EXHIBITS

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ARTICLE 1. GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

Per "Design Requirements" published for Solicitation No. 1415-91.

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

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User Notes:

(1496534068)

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

Per "Design Requirements" published for Solicitation No. 1415-91.

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

Per "Design Requirements" published for Solicitation No. 1415-91.

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

Per "Design Requirements" published for Solicitation No. 1415-91.

§ 1.1.5

Number not used.

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

Per "Design Requirements" published for Solicitation No. 1415-91 as amended through the Board of Education's action November 2, 2015.

§ 1.1.7 The Owner's design and construction milestone dates:

(Paragraphs deleted)

Per "Design Requirements" published for Solicitation No. 1415-91

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

.1 Architect

SFL+A Architects, P.A. 333 Fayetteville Street Suite 225, Raleigh, NC 27601.

.2 Consultants

Per Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91.

.3 Contractors

Per Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91.

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

Per "Design Requirements" published for Solicitation No. 1415-91 (Summary of Services Required, Article 3).

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

Executive Director of Facilities (or a designee identified in writing by the owner.)
Horry County Schools
Facilities Department, 1160 E Highway 50
Conway, SC 29526
843.488.6965

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

N/A

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

Functional Performance Consultant (TBD)

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

Robbie Ferris, S.C. AR.6106
FIRSTFLOOR ENERGY POSITIVE LLC,
333 Fayetteville St., Suite 225, Raleigh, NC 27601
919-573-6350

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

☒ [X] Litigation in a court of competent
(Paragraphs deleted)
jurisdiction, nonjury before a circuit judge in Horry County, SC.

§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract, signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner may have employees that are design professionals or otherwise skilled in construction or construction management, and such employees may, from time to time, perform various tasks or duties for or on behalf of the Owner under this Agreement. However, it is specifically understood that the Owner (including these agents and employees) has no obligation or duty to apply specialty or professional knowledge and skill, and shall not be held to have undertaken to provide or perform any aspect of the Owner's performance of this Agreement as a design professional or specially skilled and knowledgeable construction industry member or construction manager, and this principle applies regardless of the Owner's position titles or office division titles as may be applicable to such employees.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

The Design-Builder may invoice the Design-Builder may invoice the owner for not more than five hundred thousand dollars (\$500,000) for its Work performed prior to the execution of the Design-Build Amendment. This amount is within and part of the price agreed in the Design-Build Amendment.

(Paragraphs deleted)

§ 2.1 number not used]

(Paragraphs deleted)

(Table deleted)

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid Forty-five (45) days after the invoice date shall bear interest at the rate of 5% p.a.

N/A

(Paragraph deleted)

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

Building Permit and Other Permits and Fees: No general building permit is required in accordance with § 6-9-110 of the South Carolina Code of Laws; however, the Contractor shall be required to provide mechanical, electrical, plumbing and other such permits which may be required for purposes of inspection at no additional cost to the District. Except for permits and fees which are the responsibility of the Contractor in the Contract Documents, the District shall secure and pay for necessary approvals, easements, assessments, utility impact fees, permits, and such charges required for the successful completion of the work.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When the Owner's Design Requirements or applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

The Office of School Facilities (OSF) shall determine the enforcement and interpretation of all the applicable codes and referenced standards on state buildings, including the District's school facilities.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. As stated in the Design Requirements, the Design-Builder shall submit written progress reports, photographs of Work in progress, and other data to the Owner electronically, or through the Owner's option, project management software, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as designated by the Owner through its project management software data requirements.

(Paragraphs deleted)

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 Certifications. Design-Builder shall include in each Application for Payment a certification from each of the Architect, Consultants, and Contractors, and furnish to the Owner, these certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner or its designee has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Wednesday, November 04, 2015 9:03 AM
To: Keith R. Powell
Subject: Fwd: 1415-91 Notices of Intent to Award
Attachments: ATT00001.htm; 1415-91 NOI CFM.pdf; ATT00002.htm; 1415-91 NOI MBM.pdf; ATT00003.htm; 1415-91 NOI SES.pdf; ATT00004.htm; 1415-91 NOI SJL.pdf; ATT00005.htm; 1415-91 NOI SMS.pdf; ATT00006.htm

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Sent from my iPhone

Begin forwarded message:

From: Ara Heinz <AHeinz@horrycountyschools.net>
Date: November 3, 2015 at 5:14:12 PM EST
To: Robbie Ferris <RFerris@sfla.biz>, "rferris@firstfloor.biz" <rferris@firstfloor.biz>
Cc: Danielle Davis <ddavis@sfla.biz>
Subject: 1415-91 Notices of Intent to Award

Mr. Ferris,

Please find attached the Notices of Intent to Award from Horry County Schools for the Design-Build Delivery of New School Facilities projects (# 1415-91). Barring any protests or issues with providing the information listed in the NOI, the official contract could be executed and go into effect on November 19, 2015. (The NOI's have also been uploaded to our website at <http://apps.hcs.k12.sc.us/apps/protrac/>.)

I am sure that either our attorneys or someone from the District will be in contact with you soon to discuss the next steps, but if you have any questions or concerns about documents, communications, procedures, etc., please do not hesitate to contact me.

Thank you for participating in this solicitation! We look forward to working with you and your team on this project!

Regards,
Ara

Ara Heinz | Procurement Services | ☎ P: 843/488-6930
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526
Website: Procurement.horrycountyschools.net

NOTICE OF INTENT TO AWARD



BID NUMBER: 1415-91	PROJECT NAME: Design-Build Delivery of New School Facilities (New Carolina Forest Middle School)		
INTENT TO AWARD A CONTRACT TO: Firstfloor Energy Positive, LLC 333 Fayetteville Street, Ste. 225 Raleigh, NC 27601		INVITATION FOR BIDS DATE: June 24, 2015	
		NOTICE OF INTENT DATE: November 3, 2015	PROTEST PERIOD END DATE: November 18, 2015
TOTAL CONTRACT PRICE ACCEPTED BY THE DISTRICT FOR AWARD: \$ 45,930,227.00			

NOTICE TO Awardee:

Horry County Schools (the District) has considered the bid submitted by the Offeror listed above for the above described project in response to its *Request for Proposals*. That Offeror is, hereby, notified that it is the District's intention to award a contract for the total contract price indicated above provided that Offeror is found by the District to meet all requirements of responsibility as indicated in the *Proposal Instructions* and in accordance with the District's Procurement Code.

CAUTION: No work should begin nor costs incurred associated with the contract prior to the commencement of the project indicated on the *Notice to Proceed* issued after the *Notice of Intent to Award* period has ended. Horry County Schools assumes no liability for the expenses incurred prior to that commencement date.

A pre-construction conference may be scheduled by the District's Construction Management Office prior to the commencement of the project provided no protests are submitted to the District before the protest end date stated above. You are required to execute or have executed and returned to the District the following documents no later than the scheduled pre-construction conference or within ten (10) days from the date of the *Notice of Intent to Award* unless otherwise stated:

- a) AIA Document A141 - 2014 (2 originals)
- b) AIA Document A141 - 2014 Exhibit A (2 originals)
- c) AIA Document A141 - 2014 Exhibit B (2 originals)
- d) AIA Document A312 - 2010 (2 originals)
- e) Detailed Schedule of Values (CSI Breakdown)
- f) Detailed Project Schedule
- g) Copy of the Contractor's business license in the jurisdiction where the work is being performed (if required).

Failure to execute and return the above documents no later than the scheduled pre-construction conference or within ten (10) days from the date of the *Notice of Intent to Award* shall indicate your abandonment of all rights under this *Notice of Intent to Award*. The District shall be entitled to such other rights as may be granted by law.

NOTICE TO ALL OTHER OFFERORS:

Any Bidder who feels aggrieved because of this *Notice of Intent to Award* has a right to protest and to present an appeal in accordance with the District's Procurement Code. Any protest must be submitted to the District's Procurement Officer listed in the *Request for Proposals*, in writing.

HORRY COUNTY SCHOOLS

By:


John K. Gardner
Chief Financial Officer

NOTICE OF INTENT TO AWARD



BID NUMBER: 1415-91	PROJECT NAME: Design-Build Delivery of New School Facilities (New Myrtle Beach Middle School)	
INTENT TO AWARD A CONTRACT TO: Firstfloor Energy Positive, LLC 333 Fayetteville Street, Ste. 225 Raleigh, NC 27601	INVITATION FOR BIDS DATE: June 24, 2015	
	NOTICE OF INTENT DATE: November 3, 2015	PROTEST PERIOD END DATE: November 18, 2015
TOTAL CONTRACT PRICE ACCEPTED BY THE DISTRICT FOR AWARD: \$ 46,485,102.00		

NOTICE TO AWARDDEE:

Horry County Schools (the District) has considered the bid submitted by the Offeror listed above for the above described project in response to its *Request for Proposals*. That Offeror is, hereby, notified that it is the District's intention to award a contract for the total contract price indicated above provided that Offeror is found by the District to meet all requirements of responsibility as indicated in the *Proposal Instructions* and in accordance with the District's Procurement Code.

CAUTION: No work should begin nor costs incurred associated with the contract prior to the commencement of the project indicated on the *Notice to Proceed* issued after the *Notice of Intent to Award* period has ended. Horry County Schools assumes no liability for the expenses incurred prior to that commencement date.

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- a) AIA Document A141 - 2014 (2 originals)
- b) AIA Document A141 - 2014 Exhibit A (2 originals)
- c) AIA Document A141 - 2014 Exhibit B (2 originals)
- d) AIA Document A312 - 2010 (2 originals)
- e) Detailed Schedule of Values (CSI Breakdown)
- f) Detailed Project Schedule
- g) Copy of the Contractor's business license in the jurisdiction where the work is being performed (if required).

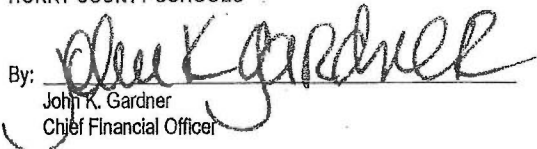
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NOTICE TO ALL OTHER OFFERORS:

Any Bidder who feels aggrieved because of this *Notice of Intent to Award* has a right to protest and to present an appeal in accordance with the District's Procurement Code. Any protest must be submitted to the District's Procurement Officer listed in the *Request for Proposals*, in writing.

HORRY COUNTY SCHOOLS

By:


John K. Gardner
Chief Financial Officer

NOTICE OF INTENT TO AWARD



BID NUMBER: 1415-91	PROJECT NAME: Design-Build Delivery of New School Facilities (New Socastee Elementary School)		
INTENT TO AWARD A CONTRACT TO: Firstfloor Energy Positive, LLC 333 Fayetteville Street, Ste. 225 Raleigh, NC 27601	INVITATION FOR BIDS DATE: June 24, 2015		PROTEST PERIOD END DATE: November 18, 2015
	NOTICE OF INTENT DATE: November 3, 2015		
TOTAL CONTRACT PRICE ACCEPTED BY THE DISTRICT FOR AWARD: \$ 37,953,991.00			

NOTICE TO Awardee:

Horry County Schools (the District) has considered the bid submitted by the Offeror listed above for the above described project in response to its *Request for Proposals*. That Offeror is, hereby, notified that it is the District's intention to award a contract for the total contract price indicated above provided that Offeror is found by the District to meet all requirements of responsibility as indicated in the *Proposal Instructions* and in accordance with the District's Procurement Code.

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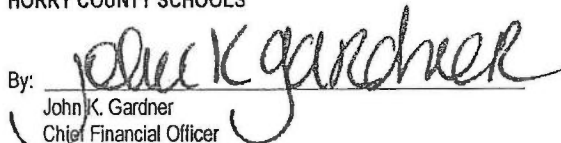
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HORRY COUNTY SCHOOLS

By:


John K. Gardner
Chief Financial Officer

NOTICE OF INTENT TO AWARD



BID NUMBER: 1415-91	PROJECT NAME: Design-Build Delivery of New School Facilities (New St. James Intermediate School)		
INTENT TO AWARD A CONTRACT TO: Firstfloor Energy Positive, LLC 333 Fayetteville Street, Ste. 225 Raleigh, NC 27601	INVITATION FOR BIDS DATE: June 24, 2015		PROTEST PERIOD END DATE: November 18, 2015
	NOTICE OF INTENT DATE: November 3, 2015		
	TOTAL CONTRACT PRICE ACCEPTED BY THE DISTRICT FOR AWARD: \$ 47,742,333.00		

NOTICE TO Awardee:

Horry County Schools (the District) has considered the bid submitted by the Offeror listed above for the above described project in response to its *Request for Proposals*. That Offeror is, hereby, notified that it is the District's intention to award a contract for the total contract price indicated above provided that Offeror is found by the District to meet all requirements of responsibility as indicated in the *Proposal Instructions* and in accordance with the District's Procurement Code.

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HORRY COUNTY SCHOOLS

By:


John K. Gardner
Chief Financial Officer

NOTICE OF INTENT TO AWARD



BID NUMBER: 1415-91	PROJECT NAME: Design-Build Delivery of New School Facilities (New Socastee Middle School)		
INTENT TO AWARD A CONTRACT TO: Firstfloor Energy Positive, LLC 333 Fayetteville Street, Ste. 225 Raleigh, NC 27601	INVITATION FOR BIDS DATE: June 24, 2015		PROTEST PERIOD END DATE: November 18, 2015
	NOTICE OF INTENT DATE: November 3, 2015		
TOTAL CONTRACT PRICE ACCEPTED BY THE DISTRICT FOR AWARD: \$ 42,488,116.00			

NOTICE TO Awardee:

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HORRY COUNTY SCHOOLS

By:

John K. Gardner
Chief Financial Officer

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Thursday, November 05, 2015 10:50 AM
To: Keith R. Powell
Subject: Horry

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Any chance we can get owner to sign early site packages so we can formally submit

Sent from my iPhone

Sheri L. Wainscott

From: Keith R. Powell
Sent: Friday, November 06, 2015 10:25 AM
To: Robbie Ferris
Subject: RE: Horry

Follow Up Flag: Follow up
Flag Status: Flagged

Does not sound like they are interested.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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-----Original Message-----

From: Robbie Ferris [<mailto:RFerris@sfla.biz>]
Sent: Thursday, November 05, 2015 10:50 AM
To: Keith R. Powell
Subject: Horry

Any chance we can get owner to sign early site packages so we can formally submit

Sent from my iPhone

Sheri L. Wainscott

From: Keith R. Powell
Sent: Wednesday, November 11, 2015 10:54 AM
To: Robbie Ferris
Subject: RE: Hcs new schools early site packages

Follow Up Flag: Follow up
Flag Status: Flagged

Sentiment is not to do anything unusual. You should build your schedules from the 19th I guess, or maybe the 20th if that is when you will have business license, insurance and bonds.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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-----Original Message-----

From: Robbie Ferris [<mailto:RFerris@sfla.biz>]
Sent: Monday, November 09, 2015 5:18 PM
To: Keith R. Powell; Ara Heinz <AHeinz@horrycountyschools.net>
Cc: Danielle Davis; Mike Wawrzyniak; Ryan Parker; JOHN H.RICHARDS
Subject: Hcs new schools early site packages

Keith/ Ara,
We would very much like to submit the early site packages for agency approval as soon as possible. Every day gained on the front end of the project is a day gained at the back end of the project. Please consider our request to have the owner sign the early site package applications so we can submit them sooner than later. We fully understand that our submission of these early site packages would be done at risk.
Thank you for your consideration of this request.
Robbie

Sent from my iPhone

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Wednesday, November 11, 2015 5:01 PM
To: Keith R. Powell
Subject: Firstfloor

Follow Up Flag: Follow up
Flag Status: Flagged

Keith,
Firstfloor energy positive has 3 member managers. This allows any of the 3 managers to sign for the company. I will be the primary
Richard Green and Eric Lindstrom are also member managers and can sign for the company. Apparently some smart lawyer suggested this so that documents could still be signed if someone goes on vacation etc...Vacations are not common occurrences with me so it will not likely be an issue.

Robbie



Robert W. Ferris, AIA, REFP, LEED AP
CEO/President
333 Fayetteville Street, Suite 225
Raleigh, NC 27601
Cell: 919.610.2251
Fax: 919.573.6355
rferris@sfla.biz
www.sfla.biz

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Wednesday, November 11, 2015 9:08 PM
To: Keith R. Powell
Subject: HCS contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Keith,

I might have been looking at the wrong document but it looks like you made a lot of changes to the contract issued in the RFP. Most of the changes are fine but here are a few thoughts.

Our insurance carriers are still reviewing the contract and I will get you their comments, if any asap:

- 1.1.3-The projects physical characteristics should refer back to the design builders proposal
- 1.1.9- This should also reference the design builders proposal
- 1.4.1-The design build proposal should be attached to make it a part of the design build documents
- 2.1- I would prefer to leave this article in the contract. Our team members relied on this provision being in the contract when developing the proposal.
- 2.1.4.1- With this project moving as fast as it is supposed to move, paying within 30 days is far more reasonable than 45 days. Is there a reason HCS can't pay within 45 days. We usually try to pay contractors within 7 days on projects that we own and it is serious motivator. When you pay fast you have lots of leverage with subs.
- 2.1.4.1-Some interest should be paid on late payments. 1% per month is normal. Do they have problems with paying their bills on time?
- 5.7.2- Line 5 and line 7 - can we change 14 days to 7 days – this job needs to move fast.
- 5.14.3- Why would the owner not be responsible to the DB if the owners consultant damage the work. For example- the owners technology contractor destroys the ceilings the day before the building opens. Why should the owner not be responsible to the design builder in this case?
- 6.3.7- Can we add language that clarifies that the post occupancy services will not delay closeout and release of retainage.
- 7.2.3-Is there a reason that you deleted zoning variances? I doubt a variance is required but unless I am missing something the owner is responsible for getting variances if required.
- 9.7 – Given the speed of this project can we change this back to 7 days
- 10.3- According to the addendum I recall that the owner is responsible for removal of Haz Mat at MB middle. Should we acknowledge this in the contract so that everyone is clear about this?
- 12.3.2- I don't think it's reasonable for the owner to be able to terminate the contract and then use the construction documents and, further, if there is a problem make the Design Builder and Architect responsible for that problem. I would leave this "as is" in the original contract.
- 13.2.4.3- Why is it not fair for the DB to make a reasonable profit if the owner cancels the contract. We could define what reasonable is if you would be more comfortable.
- A.3.1.6- Design Builders assumptions and clarifications:
The design builders proposal dated xxx is acceptable to the owner and is determined by the owner to comply with the requirements of the RFP.
- A.4.1.and A.4.2 We will get you the info to fill in blanks asap.



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"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

Sheri L. Wainscott

From: Keith R. Powell
Sent: Thursday, November 12, 2015 10:12 AM
To: Robbie Ferris
Subject: RE: HCS contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks. I ran it in "variance check" mode this time, so as I told your colleagues, it looks quite different from the earlier version but I didn't actually change all that much in the text. I think a lot of these were in the one published in the addendum, but that does not mean we cannot make reasonable adjustments. However I'll have to do more discussions with HCS about anything that changes from the original that is not just filling in blanks.

Keith R. Powell
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"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Thursday, November 12, 2015 5:20 PM
To: Keith R. Powell
Subject: Horry county schools

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith

This relates back to Our proposal taking precedent over the RFP. We had additional allowances in our proposal that were not outlined in the RFP. For example we had \$200,000 for landscaping in our proposal.

Sent from my iPhone

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Thursday, November 12, 2015 9:06 PM
To: Keith R. Powell
Subject: Re: HCS contracts
Attachments: image001.png

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Ok

I understand, I will go back and look at my rfp version again

I do think many of my comments would accrue to the benefit of the district

As well as to us

Robbie

Sent from my iPhone

On Nov 12, 2015, at 10:12 AM, Keith R. Powell <kpowell@childs-halligan.net> wrote:

Thanks. I ran it in "variance check" mode this time, so as I told your colleagues, it looks quite different from the earlier version but I didn't actually change all that much in the text. I think a lot of these were in the one published in the addendum, but that does not mean we cannot make reasonable adjustments. However I'll have to do more discussions with HCS about anything that changes from the original that is not just filling in blanks.

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To: Keith R. Powell
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<image001.png>

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"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 12:15 PM
To: Keith R. Powell
Subject: Horry allowance

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,
I recall the board approving funds to restore the owner contingency. I assume that contingency will be held outside of our contract, however if we want it inside of our contract for some reason we can do that but we would have to increase The contract amount by the amount of the owner contingency. I am fine with it either way.
Robbie

Sent from my iPhone

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 3:10 PM
To: Keith R. Powell
Subject: HCS contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,

Would it make sense if you set up a meeting for next Thursday where we go to Horry and I and the owner sign contracts?

I am told, by subcontractors, that the normal procedure in Horry County is that if applications for payment are received by the 23rd you get paid by the 10th. You might want to confirm that the 23rd is there magic date for applications for payment.

Here is the info for the remaining blanks:

A2.2- Keith these are the days for each project per the schedule in our proposal:

Carolina Forest MS
Myrtle Beach MS
St James IS
Socastee ES
Socastee MS

Article A.4:

Carolina Forest Middle School:
Superintendent: Mark Branch
Project Manager: Charlie Rollins
Assistant Superintendent: Gary Pipkin

Myrtle Beach Middle School:
Superintendent: Ed Bruce
Project Manager: Rusty Woolard
Assistant Superintendent: Ray Carrino

St. James Intermediate:
Superintendent: Randall Jernigan
Project Manager: Steve Bond
Assistant Superintendent: Rodney Nichols

Socastee ES:
Superintendent: Dale McCoy
Project Manager: Mike Dickman
Assistant Superintendent: David Isham

Socastee Middle School:
 Superintendent: Phil Asslynn
 Project Manager: Mike Dickman
 Assistant Superintendent: Bob Green

Article A.4.2

SfL+a Architects: Architect, Raleigh NC
 Metcon/TA Loving joint venture: General Contractor, Pembroke NC

Article 3.1.5.1

Keith

In addition to the allowances in the RFO, listed below, we have a landscaping allowance of \$200,000 for each school except that we have 250,000 for myrtle beach middle school. Our overhead and profit is outside this number. This is the amount that we can issue to subcontractors for the actual work. If we don't spend all of this HCS will get it back. You can list this in the allowance section or the contingency section, I don't think it matters...

	CF	MB	SJ	SM	SE	total not including
the landscape allowance						
1030.000 - Owner Furniture Allowance	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ 1,250,000	\$ 1,000,000	
1031.000 - Owner Hardware Allowance	\$ 350,000	\$ 350,000	\$ 350,000	\$ 350,000	\$ 250,000	
1032.000 - Owner Controls Allowance	\$ 650,000	\$ 650,000	\$ 650,000	\$ 650,000	\$ 500,000	
1033.000 - Owner Fire Alarm Allowance	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 600,000	
1034.000 - Owner Playground Equip. All			\$ 150,000		\$ 350,000	
1035.000 - Owner Special Inspections All	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	
1036.000 - Owner Commissioning Allo	\$ 125,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 100,000	
1037.000 - Owner Technology Allowance	\$ 1,865,000	\$ 1,865,000	\$ 1,865,000	\$ 1,645,000	\$ 1,275,000	
	\$ 5,390,000	\$ 5,390,000	\$ 5,540,000	\$ 4,920,000	\$ 4,225,000	\$ 25,465,000



Robert W. Ferris, AIA, REFP, LEED AP
 CEO/President
 SfL+a Architects
 333 Fayetteville Street, Suite 225
 Raleigh, NC 27601
 Cell: 919.610.2251
 Fax: 919.573.6355
rferris@sfla.biz
www.sfla.biz

"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

Sheri L. Wainscott

From: Keith R. Powell
Sent: Friday, November 13, 2015 3:42 PM
To: Robbie Ferris
Subject: Re: HCS contracts
Attachments: image002.png

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Not a bad idea. I have morning booked up Thursday but could probably arrive mid afternoon.

Working on the owner rep issue.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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On Nov 13, 2015, at 3:10 PM, Robbie Ferris <RFerris@sfla.biz> wrote:

Keith,
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Here is the info for the remaining blanks:

A2.2- Keith these are the days for each project per the schedule in our proposal:

Carolina Forest MS
Myrtle Beach MS
St James IS
Socastee ES
Socastee MS

Article A.4:

Carolina Forest Middle School:
Superintendent: Mark Branch

Project Manager: Charlie Rollins
Assistant Superintendent: Gary Pipkin

Myrtle Beach Middle School:
Superintendent: Ed Bruce
Project Manager: Rusty Woolard
Assistant Superintendent: Ray Carrino

St. James Intermediate:
Superintendent: Randall Jernigan
Project Manager: Steve Bond
Assistant Superintendent: Rodney Nichols

Socastee ES:
Superintendent: Dale McCoy
Project Manager: Mike Dickman
Assistant Superintendent: David Isham

Socastee Middle School:
Superintendent: Phil Asslynn
Project Manager: Mike Dickman
Assistant Superintendent: Bob Green

Article A.4.2

SfL+a Architects: Architect, Raleigh NC
Metcon/TA Loving joint venture: General Contractor, Pembroke NC

Article 3.1.5.1

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Robert W. Ferris, AIA, REFP, LEED AP

CEO/President
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Raleigh, NC 27601
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From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 3:43 PM
To: Keith R. Powell
Subject: Re: HCS contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Ok
Let me know

Sent from my iPhone

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Keith R. Powell
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<image002.png>

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 4:57 PM
To: Keith R. Powell
Subject: FW: Horry County School Schedule VS Proposal
Attachments: HCS - 4 School Combo - Schedule 09.01.15.pdf; HCS - 5 School Combo - 11.11.15 REV# 1.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,

I have included the email chain with our project manager so in case I don't fully describe the dates were proposing you will have the benefit of the schedule in his words.

We propose reducing the total duration from 575 days to 566 days in exchange for a bit of grace in how we get there. In our individual schedules, in our proposal, we made a mistake. We scheduled pilings on the wrong school so we corrected that mistake here. We propose you use the "revised" dates below for the contract. As far as Socastee MS goes my ideas are as follows:

Option 1: 547 days from a notice to proceed if pilings are not needed and 566 days if pilings are needed.

Option 2: A schedule will be determined once a site is selected but it is expected that the schedule will approximate the schedule for Socastee Elementary School

Robbie

From: Ryan Parker [mailto:rparker@metconus.com]
Sent: Wednesday, November 11, 2015 7:13 PM
To: Robbie Ferris
Cc: Aaron Thomas; Sam Isham; David Philyaw (dphilyaw@taloving.com); Mike Mitchell (mmitchell@taloving.com); mrichter@taloving.com; rlangston@taloving.com
Subject: RE: Horry County School Schedule VS Proposal

Robbie,

We need to discuss this tomorrow in depth so that everyone is on the same page before you submit to anyone with Horry County or their council.

- Notes
 - St. James and Carolina Forest had the pile activities switched which accounts for the difference in their duration
 - The proposal asked for a schedule for the 4 school combo. An assumption was made that land would be bought and mass grading drawings could be prepared close to or before the 10/5 start date. That didn't happen so the elementary school took the place of the middle school.
- Myrtle Beach Middle School
 - Original 10/5 thru 4/3 - 546
 - Revised 11/19 thru 5/19 - 547
- St. James Intermediate School
 - Original 10/5 thru 3/10 - 522

- Revised 11/19 thru 6/2 - 561
- Carolina Forest Middle School
 - Original 10/5 thru 4/25 - 568
 - Revised 11/19 thru 5/5 - 533
- Socastee Elementary
 - Original 10/5 thru 5/2 - 575
 - Revised 11/19 thru 6/7 - 566
- Socastee Middle School
 - No land at time of original subcontract
 - Original 4 School combo schedule didn't include elementary.

With Regards

Ryan Parker | Senior Project Manager

Metcon, Inc. | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372
 office 910.521.8013 | mobile 910.374.2766 | email:rparker@metconus.com
[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)



PEMBROKE | RALEIGH | CHARLOTTE | COLUMBIA

From: Robbie Ferris [mailto:RFerris@sfla.biz]

Sent: Wednesday, November 11, 2015 4:24 PM

To: Ryan Parker

Cc: Aaron Thomas; Sam Isham; David Philyaw (dphilyaw@taloving.com); Mike Mitchell (mmitchell@taloving.com); mrichter@taloving.com; rlangston@taloving.com

Subject: RE: Horry County School Schedule VS Proposal

- Ryan, We need the days for each individual project since we have 5 contracts. This would be the days "From the Schedule submitted with the proposal"

From: Ryan Parker [mailto:rparker@metconus.com]

Sent: Wednesday, November 11, 2015 2:03 PM

To: Robbie Ferris

Cc: Aaron Thomas; Sam Isham; David Philyaw (dphilyaw@taloving.com); Mike Mitchell (mmitchell@taloving.com); mrichter@taloving.com; rlangston@taloving.com

Subject: Horry County School Schedule VS Proposal

Robbie,

In response to your question via text. *"The contract states the number of calendar days from a notice to proceed as opposed to a stipulated day. Ryan please tell me the number of calendar days in our proposal that was from the date we had shown them signing the grading application until we had shown the project being complete."*

- From the Schedule submitted with the proposal
 - Civil Mas Grading Drawings in for review October 5th 2015
 - Final Completion of all 4 projects 5/2/17

- Total Calendar Days – 575
- From the Updated Schedule – (conference call at 3:00 PM with Civil Engineer and Southern Asphalt)
 - Civil Mass Grading Drawings in for Review – 11/19/2015
 - Final Completion for all 4 projects – 6/7/2015
 - This doesn't include Socastee Middle which we don't have a site for. It is handled differently based on assumptions of when we will be given the site.
 - Total Calendar Days – 566 Days

With Regards

Ryan Parker | Senior Project Manager

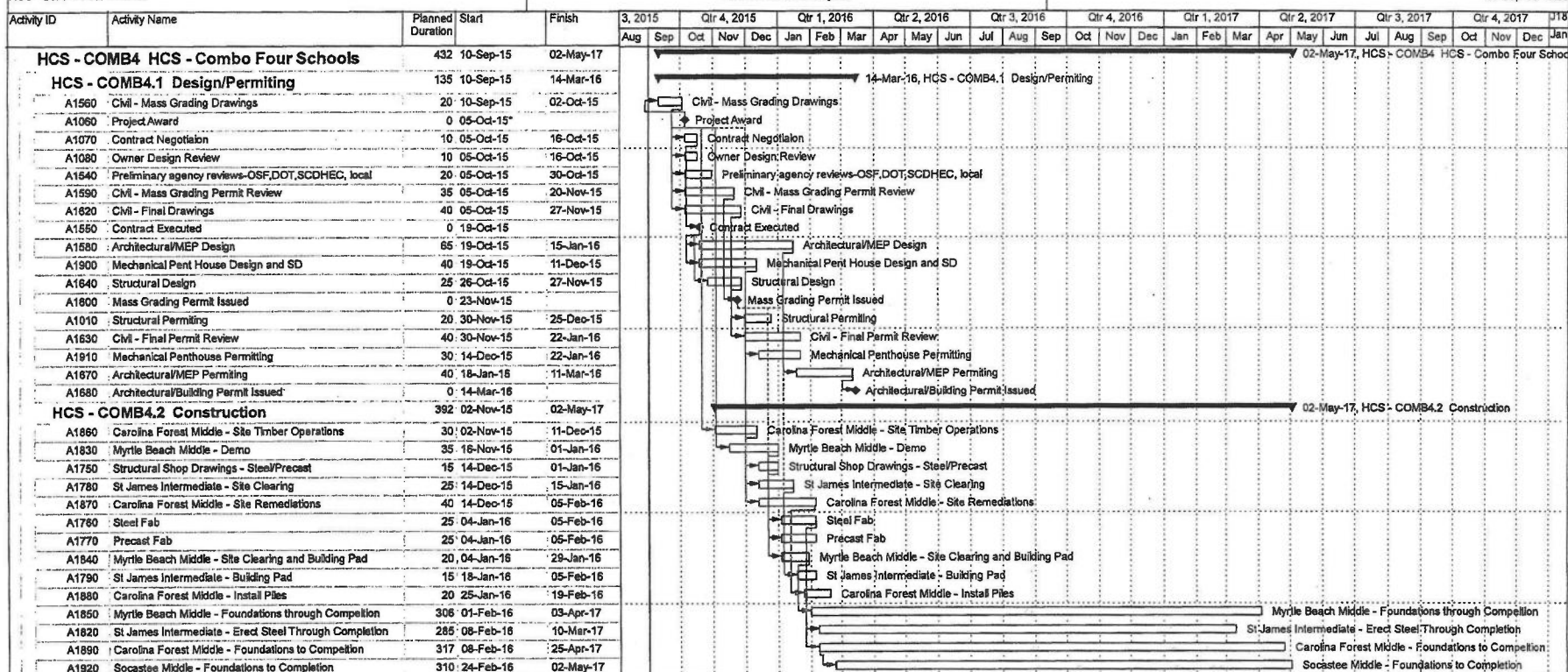
Metcon, Inc. | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372

office 910.521.8013 | mobile 910.374.2766 | email: rparker@metconus.com

[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)



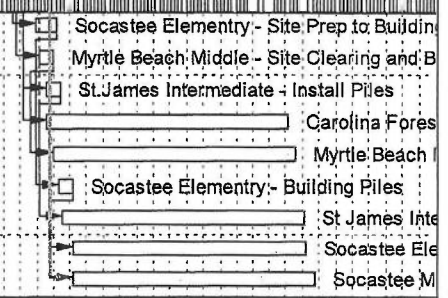
PEMBROKE | RALEIGH | CHARLOTTE | COLUMBIA



Actual Work
 Critical Remaining Work
 Remaining Work
 Summary
 Milestone

© Primavera Systems, Inc.

Activity ID	Activity Name	Planned Duration	Actual Duration	Activity % Complete	Start	Finish		J	A	J	J	A	S	J	J	A	J	J	A	S	J	J
A1990	Socastee Elementary - Site Prep to Building Pad	30	0	0%	28-Jan-16	09-Mar-16																
A1840	Myrtle Beach Middle - Site Clearing and Building Pad	20	0	0%	04-Feb-16	02-Mar-16																
A1880	St.James Intermediate - Install Piles	20	0	0%	18-Feb-16	16-Mar-16																
A1890	Carolina Forest Middle - Foundations to Completion	317	0	0%	18-Feb-16	05-May-17																
A1850	Myrtle Beach Middle - Foundations through Completion	317	0	0%	03-Mar-16	19-May-17																
A1980	Socastee Elementary - Building Piles	20	0	0%	10-Mar-16	06-Apr-16																
A1820	St James Intermediate - Foundations through Completion	317	0	0%	17-Mar-16	02-Jun-17																
A1920	Socastee Elementary - Foundations to Completion	305	0	0%	07-Apr-16	07-Jun-17																
A1970	Socastee Middle - Foundations through Completion	317	0	0%	07-Apr-16	23-Jun-17																



☐ Actual Work
 ☐ Critical Remaining Work
 ☐ Summary
☐ Remaining Work
 ◆ Milestone

Sheri L. Wainscott

From: Keith R. Powell
Sent: Tuesday, November 17, 2015 1:22 PM
To: Robbie Ferris
Cc: Clark, Brad (Brad.Clark@BBandT.com)
Subject: RE: HCS | Exhibit B
Attachments: Boiler & Machinery coverage.pdf; Builder's Risk policy info.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Here are the forms. The BR policy talks about "your" property, but the IRF won't let HCS name a nongovernment entity as an insured or loss payee.

Keith R. Powell
Childs & Halligan, P.A.
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From: Robbie Ferris [mailto:RFerris@sfla.biz]
Sent: Tuesday, November 17, 2015 12:22 PM
To: Keith R. Powell
Cc: Clark, Brad (Brad.Clark@BBandT.com)
Subject: FW: HCS | Exhibit B

Keith,
Apparently our insurance company sent me an email about this a few days ago that I never sent you.
Sorry!!
Feel free to call Brad directly to discuss his concerns.
Robbie

Robbie/Mike,

After reviewing this updated draft, I still see the same potential problem areas as previously outlined. There are some significant gaps in the protection of First Floor and subcontractors with the language used for Builder's Risk coverage, specifically:

- Design-Builder and subcontractors of all tiers should have insured status on the Builder's Risk policy in order to ensure your interests are protected.
- HCS should agree to waive subrogation against First Floor and subcontractors of all tiers for losses covered by the Builder's Risk policy. This waiver will prevent HCS' insurer from seeking subrogation against First Floor's or a subcontractor's GL coverage if a contractor caused damage to the project.

- The contract states that HCS has the responsibility to pay losses not covered by deductibles, but the contract does not state anything regarding excluded perils, inadequate limits, or property not covered. These can all be significant exposures.
- Other areas as outlined in the attached "Builder's Risk Considerations".

Additional Insured status is still referenced for Pollution Liability coverage even though that coverage is not required by HCS. I recommend striking this language since First Floor is not required to carry Pollution Liability by HCS. As discussed previously, BB&T still recommends that you purchase Pollution Liability coverage to protect First Floor.

Thanks,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Peeples, Kenneth
Sent: November 17, 2015 10:30 AM
To: Blanchard, Kathy; Clark, Brad
Subject: Fwd: Hcs

Ken Peeples
919-281-4510 office
919-215-9779 cell
Via iPhone

Begin forwarded message:

From: Robbie Ferris <RFerris@sfla.biz>
Date: November 17, 2015 at 9:55:52 AM EST
To: Nancy Zablud <NZablud@sfla.biz>, Mike Wawrzyniak <mwawrzyniak@sfla.biz>, "Kenneth J. Peeples" <kpeeples@bbandt.com>, Aaron Thomas <athomas@metconus.com>, Mike Richter <mrichter@taloving.com>
Subject: Fwd: Hcs

Guys,
See attached exhibit B in the email from Keith Powell.
Robbie

Sent from my iPhone

Begin forwarded message:

From: "Keith R. Powell" <kpowell@childs-halligan.net>
Date: November 17, 2015 at 9:47:32 AM EST
To: "Robbie Ferris (RFerris@sfla.biz)" <RFerris@sfla.biz>, Mark Wolfe
<MWolfe002@horrycountyschools.net>, "Ara Heinz
(AHeinz@horrycountyschools.net)" <AHeinz@horrycountyschools.net>, John
Gardner <JGardner@horrycountyschools.net>, Kenneth Generette
<KGenerette@horrycountyschools.net>, "rmaxey@horrycountyschools.net"
<rmaxey@horrycountyschools.net>
Cc: "William F. Halligan" <bhalligan@childs-halligan.net>
Subject: RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell
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On Nov 17, 2015, at 7:43 AM, Robbie Ferris <RFerris@sfla.biz> wrote:

Keith

Can you send the latest version of the contract for review

Robbie

Sent from my iPhone

The information in this transmission may contain proprietary and non-public information of BB&T or its affiliates and may be subject to protection under the law. The message is intended for the sole use of the individual or entity to which it is addressed. If you are not the intended recipient, you are notified that any use, distribution or copying of the message is strictly prohibited. If you received this message in error, please delete the material from your system without reading the content and notify the sender immediately of the inadvertent transmission.

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Tuesday, November 17, 2015 1:25 PM
To: Keith R. Powell
Cc: Clark, Brad (Brad.Clark@BBandT.com)
Subject: RE: HCS | Exhibit B

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Brad, Your thoughts.

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Cc: Clark, Brad (Brad.Clark@BBandT.com)
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Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Peeples, Kenneth
Sent: November 17, 2015 10:30 AM
To: Blanchard, Kathy; Clark, Brad
Subject: Fwd: Hcs

Ken Peeples
919-281-4510 office
919-215-9779 cell
Via iPhone

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From: Robbie Ferris <RFerris@sfla.biz>
Date: November 17, 2015 at 9:55:52 AM EST
To: Nancy Zabrud <NZabrud@sfla.biz>, Mike Wawrzyniak <mwawrzyniak@sfla.biz>, "Kenneth J. Peeples" <kpeeples@bbandt.com>, Aaron Thomas <athomas@metconus.com>, Mike Richter <mrichter@taloving.com>
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To: "Robbie Ferris (RFerris@sfla.biz)" <RFerris@sfla.biz>, Mark Wolfe
<MWolfe002@horrycountyschools.net>, "Ara Heinz
(AHeinz@horrycountyschools.net)" <AHeinz@horrycountyschools.net>, John
Gardner <JGardner@horrycountyschools.net>, Kenneth Generette
<KGenerette@horrycountyschools.net>, "rmaxey@horrycountyschools.net"
<rmaxey@horrycountyschools.net>
Cc: "William F. Halligan" <bhalligan@childs-halligan.net>
Subject: RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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On Nov 17, 2015, at 7:43 AM, Robbie Ferris <RFerris@sfla.biz> wrote:

Keith

Can you send the latest version of the contract for review

Robbie

Sent from my iPhone

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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Tuesday, November 17, 2015 3:45 PM
To: Keith R. Powell
Subject: HCS contracts
Attachments: Book1.xlsx

Follow Up Flag: Follow up
Flag Status: Flagged

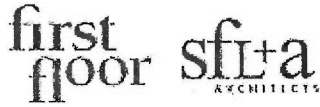
Categories: Red Category

Keith,

All the needed sign offs are still coming in from our team but I think we're very close to being checked off. I do have one revision request. We would like to bill for pre-construction , proposal development and schematic design. The breakdown is in the attachment but the total is \$5,504,430.00. We are actually in DD so I think billing for SD is very reasonable.

What do you think?

Robbie



Robert W. Ferris, AIA, REFP, LEED AP
CEO/President
333 Fayetteville Street, Suite 225
Raleigh, NC 27601
Cell: 919.610.2251
Fax: 919.573.6355
rferris@sfla.biz
www.sfla.biz

	1	2	3	4	5 totals	
Firstfloor Proposl Dev	\$ 253,187.00	\$ 250,165.00	\$ 260,035.00	\$ 206,721.00	\$ 231,417.00	\$ 1,201,525.00
Pre construction estimating and bidding	\$ 126,000.00	\$ 126,000.00	\$ 126,000.00	\$ 126,000.00	\$ 126,000.00	\$ 630,000.00
A&E-Schematic design	\$ 750,840.00	\$ 741,878.00	\$ 771,147.00	\$ 722,760.00	\$ 686,280.00	\$ 3,672,905.00
						\$ 5,504,430.00

Sheri L. Wainscott

From: Keith R. Powell
Sent: Tuesday, November 17, 2015 4:11 PM
To: Robbie Ferris
Subject: RE: HCS contracts

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Red Category

There is a clause about this in my draft, but I had no amounts. I only used \$500K as the "catch up" billing allowable (per project) simply because I heard you say near the end of the competition that you had about \$2.5M invested, but if the concept is the same I don't see a big difference in using your enclosed figures if HCS concurs.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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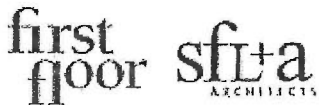
From: Robbie Ferris [<mailto:RFerris@sfla.biz>]
Sent: Tuesday, November 17, 2015 3:45 PM
To: Keith R. Powell
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Keith,

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What do you think?

Robbie



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CEO/President
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Raleigh, NC 27601
Cell: 919.610.2251
Fax: 919.573.6355
rferris@sfla.biz
www.sfla.biz

DRAFT AIA Document A141™ - 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the 19th day of «November» in the year two thousand fifteen (2015). »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.
335 Four Mile Rd | PO Box 260005
Conway, SC 29528
District Office Phone 843.488.6700 »
« »
« »

and the Design-Builder:
(Name, legal status, address and other information)

FIRSTFLOOR ENERGY POSITIVE, LLC,
333 Fayetteville St., Suite 225
Raleigh, NC 27601

for the following Project:
(Name, location and detailed description)

New Carolina Forest Middle School«
(per Owner's Request for Proposals No. 1415-91)

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.



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User Notes: (1346784345)

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 COMPENSATION AND PROGRESS PAYMENTS
- 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
- 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 6 CHANGES IN THE WORK
- 7 OWNER'S RESPONSIBILITIES
- 8 TIME
- 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 UNCOVERING AND CORRECTION OF WORK
- 12 COPYRIGHTS AND LICENSES
- 13 TERMINATION OR SUSPENSION
- 14 CLAIMS AND DISPUTE RESOLUTION
- 15 MISCELLANEOUS PROVISIONS
- 16 SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

- A DESIGN-BUILD AMENDMENT
- B INSURANCE AND BONDS

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

«Per "Design Requirements" published for Solicitation No. 1415-91.

I have concerns about using the phrasing "per "Design Requirements" published for Solicitation 1415-91" in this contract. Based on the comments of several of the evaluation committee members as well as info provided by Mr.

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User Notes: (1346784345)

Batson, what has been proposed by FFEF does not appear to meet all of the "Design Requirements" listed in the solicitation. If we leave the wording as stated, does that mean they need to fully comply with ALL of the design requirements? Or should we modify the wording to reflect evaluation of what was actually submitted? Maybe something like, "per "Design Requirements" published for Solicitation No. 1415-91 as amended in the proposal submitted by the Design-Builder". My comment here is the same for §1.1.2, §1.1.3, §1.1.4, and §1.1.6.

§ 1.1.2 The Owner's design requirements for the Project and related documentation:
(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

« Per "Design Requirements" published for Solicitation No. 1415-91.

§ 1.1.3 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

« Per "Design Requirements" published for Solicitation No. 1415-91.

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:
(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

« Per "Design Requirements" published for Solicitation No. 1415-91.

§ 1.1.5

« Number not used. »

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:
(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

« Per "Design Requirements" published for Solicitation No. 1415-91 as amended through the Board of Education's action November 2, 2015.»

§ 1.1.7 The Owner's design and construction milestone dates: Per "Design Requirements" published for Solicitation No. 1415-91

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

.1 Architect

«SFL+A Architects, P.A. 333 Fayetteville Street Suite 225, Raleigh, NC 27601. »

.2 Consultants

«Per Design-Builder's Proposal to Owner pursuant to -Solicitation No.1415-91.»

.3 Contractors

« Per Design-Builder's Proposal to Owner pursuant to -Solicitation No.1415-91.»

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

« Per "Design Requirements" published for Solicitation No. 1415-91 (Summary of Services Required, Article 3).

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

Executive Director of Facilities (or a designee identified in writing by the owner.)
Horry County Schools
Facilities Department, 1160 E Highway 501
Conway, SC 29526 »
«mwolfe002@horrycountyschools.net »
«843.488.6965 »

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

«N/A »

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

«Functional Performance Consultant (TBD) »

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

«Robbie Ferris, S.C. AR.6106 »
«FIRSTFLOOR ENERGY POSITIVE, LLC, 333 Fayetteville St., Suite 225, Raleigh, NC 27601 »
« 919-573-6350 »

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

☒ «X» Litigation in a court of competent jurisdiction.

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User Notes: (1346784345)

nonjury before a circuit judge in Horry County, SC.

Why nonjury?

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§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner may have employees that are design professionals or otherwise skilled in construction or construction management, and such employees may, from time to time, perform various tasks or duties for or on behalf of the Owner under this Agreement. However, it is specifically understood that the Owner (including these agents and employees) has no obligation or duty to apply specialty or professional knowledge and skill, and shall not be held to have undertaken to provide or perform any aspect of the Owner's performance of this Agreement as a design professional or specially skilled and knowledgeable construction industry member or construction manager, and this principle applies regardless of the Owner's position titles or office division titles as may be applicable to such employees. This appears to serve as protection for our "licensed/certified" employees such as architects (Mark A. Mark K.) and engineers (Dennis). Is this correct?

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§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

The Design-Builder may invoice the Design-Builder may invoice the owner for not more than five hundred thousand dollars (\$500,000) for its Work performed prior to the execution of the Design-Build Amendment. This amount is within and part of the price agreed in the Design-Build Amendment.

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§ 2.1 number not used]

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid Forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

(Insert rate of monthly or annual interest agreed upon.) of 5% p.a.

N/A Which is correct? 5% p.a. or N/A? It is my understanding that we do NOT pay late fees on any types of contracts. Our standard construction contract states that no interest is accrued when payment request is in dispute or when we withhold payment. Additionally, FFEP did not explicitly state in their proposal that they had any comments on this particular clause. They mentioned that "mutually agreeable terms shall be included" in the Agreement. I don't think this is mutually agreeable.

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§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

Building Permit and Other Permits and Fees: No general building permit is required in accordance with §

6-9-110 of the South Carolina Code of Laws; however, the Contractor shall be required to provide mechanical, electrical, plumbing and other such permits which may be required for purposes of inspection at no additional cost to the District. Except for permits and fees which are the responsibility of the Contractor in the Contract Documents, the District shall secure and pay for necessary approvals, easements, assessments, utility impact fees, permits, and such charges required for the successful completion of the work.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts, errors, and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work. I've always heard/seen the phrase "errors & omissions". Not sure of the legal difference among any of these words, but it just looked odd to me.

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§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When the Owner's Design Requirements or applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

The Office of School Facilities (OSF) and State Fire Marshall shall determine the enforcement and interpretation of all the applicable codes and referenced standards on state buildings, including the District's school facilities.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. As stated in the Design Requirements, the Design-Builder shall submit written progress reports, photographs of Work in progress, and other data to the Owner electronically, or through the Owner's option, project management software, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;

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User Notes: (1346784345)

- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as designated by the Owner- through its project management software data requirements.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 **Certifications.** Design-Builder shall include in each Application for Payment a certification from each of the Architect, Consultants, and Contractors, and furnish to the Owner, these certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner or its designee has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 **Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.13 **Royalties, Patents and Copyrights**

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 **Indemnification**

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts, errors, or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 **Contingent Assignment of Agreements**

- § 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that
- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
 - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 **Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

[Numbers §4.2 & §4.3 intentionally not used]

§ 4.4 Design-Builder's Construction Proposal

§ 4.4.1 The Design-Builder's Construction Proposal shall include the following:

- .1 A list of the documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's original Design Requirements and the Design-Builder's original Proposal Development Documents as proposed in the Owner's procurement leading to this Agreement, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion (or phased beneficial occupancy, if applicable and acceptable to the Owner); *[have a problem with the wording shown in the parenthesis: Phased beneficial occupancy wasn't really offered or allowable by the other firms. Why is it being mentioned here?]*
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Construction Proposal expires.

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§ 4.4.2 Submission of the Design-Builder's Construction Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.1.2.1 The Design-Builder shall submit three copies of all Construction Documents prepared and submitted to Regulatory Agencies as a portion of the permitting and approval process for this work.

§ 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment and issuance of a properly executed Notice to Proceed.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment and Notice to Proceed. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

Maintenance of Record Drawings: The Contractor shall maintain at the worksite one (1) record copy of the Contract Documents including approved changes in good order and marked currently to record changes and selections made during performance of the work. A copy of submittals accepted by the District shall also be maintained at the worksite. These items shall be available to the Architect and District when present at the worksite. When required by the Contract Documents, the Contractor shall provide record drawings on all increments of the work such as, by way of illustration and not limitation, plumbing, electrical, mechanical, and all systems, such as fire and security systems, incorporated into the work. The Contractor shall furnish an electronic and paper copy of record drawings of "as-built" detail to the Architect at final completion of all work, excluding punch list items as required by the Contract Documents.

Professional Certifications: When professional certification of performance criteria for materials, systems, or equipment is required by the Contract Documents, the District shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

Contractor's Quality Control Program: The Contractor shall institute and maintain throughout the contract term a quality control program, designed to ensure the work performed is in accordance with the Contract Documents, including any changes, at all times and in all respects. The program shall include providing daily supervision and conducting frequent inspections by the Worksite Superintendent(s).

1. **Compliance with Employment Laws:** By entering into a *Contract Agreement*, the Contractor agrees to abide by all applicable laws pertaining to employment including, by way of illustration and not limitation, the following:

- A. Title VII of the Civil Rights Act of 1964, as may be amended.
- B. Age Discrimination in Employment Act of 1964, as may be amended.
- C. Title I of the Americans Disabilities Act of 1990, as may be amended.
- D. Equal Pay Act of 1963, as may be amended.
- E. Fair Labor Standards Act, as may be amended.
- F. South Carolina Wages Act, Code 37-10-10 et seq., as may be amended.
- G. South Carolina Worker's Compensation Act, Code 42-1-10 et seq., as may be amended.

The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin except when such condition is a bona fide occupational qualification reasonably necessary for normal operations of the Contractor. The Contractor, in all solicitations or advertisements for employees, shall state the Contractor is an "Equal Opportunity Employer." The Contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and shall include the provision of this paragraph in every subcontract or purchase agreement of more than \$10,000.

Employment Taxes and Benefits: The District shall not withhold from the contract payments any Federal or State income taxes, or any employment-related taxes normally withheld on the District's employees. Further, the District

shall not provide any employment related insurances or other benefits such as worker's compensation for the benefit of any Contractor, subcontractor or supplier employees.

Project Key Staff – Project Manager: The Contractor shall assign a skilled, experienced, and dedicated Project Manager to the project and identified in Exhibit A. The Project Manager shall secure the materials of proper quality and quantity to meet the Contract Documents and manage the appropriate timing of all materials, sub-contracted work, and Contractor provided labor to ensure the continual progress of the work to meet the substantial completion date. The Contractor shall not change the Project Manager identified in the *Scope of Work (Exhibit A)* or the duties and status of the Project Manager during the course of the project without approval of the District.

I think we need to verify where the PM is named in these documents. If I remember correctly, this language has been pulled from our standard construction contract form, and the AIA documents do not necessarily have documents entitled *Scope of Work (Exhibit A)*.

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Project Key Staff -- Worksite Superintendent(s): The Contractor shall employ at least one (1) full-time, competent Worksite Superintendent and, if required by the Contract Documents, an additional part-time or full-time, competent secondary Worksite Superintendent if expedient for the size and scope of the project. Exhibit A identifies the Worksite Superintendent(s). No less than one (1) Worksite Superintendent shall be in attendance at the worksite at all times during performance of any work by the Contractor's own forces or subcontractors and during delivery of any materials. The Worksite Superintendent shall not perform the work of any trade or other duties; however, the secondary Worksite Superintendent may perform part-time work of a trade or the duties of OSHA Compliance Officer or fireguard, if approved by the District. The Contractor shall not change any Worksite Superintendent identified in the *Scope of Work (Exhibit A)* or the duties or status of same during the course of the project without approval of the District. The Worksite Superintendent(s) shall enforce strict discipline and good order among the Contractor's representatives, agents, employees, subcontractors and suppliers.

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Worksite Communications: The Project Manager and Worksite Superintendent(s) are representatives of the Design Builder and communications given to them, either orally or in writing, shall be as binding as if given to the Principal of the Design Builder.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

1. allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
2. the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
3. whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder desires to change any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, including but not limited to any contractor or design professional identified by the Design-Builder in its Request for Qualifications response, the Design-Builder shall notify the Owner and provide the name and qualifications of the proposed new personnel, design professional, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the

proposed new personnel, design professional, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection.

§ 5.8 Documents and Submittals at the Site

In addition to any Owner requirements to keep electronic project data up to date, the Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner and other contractor(s) for costs the Owner and other contractor(s), respectively, incur because of the Design-Builder's delays, improperly timed activities or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Build stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance; this is not the same as allowed in our standard construction contract. I believe we should follow our standard process here. I'm attaching a copy of the allowable charges and limitations in our current contracts.

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- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; provided that costs of premiums, permits, and taxes that are based on marginal additions to an existing sum or quantity may all be reasonably estimated subject to correction at the time of Final Payment or other agreed time when the actual costs of the marginal additions can be determined or mutually agreed upon; and See comment above;
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

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Allowable Overhead and Profit Charges: Additional overhead and profit attributable to the change in contract pricing shall not exceed the following:

- A. For work performed by the Contractor's own forces, a maximum of ten percent (10%) of the allowable direct costs or the unit pricing negotiated at the time of award.
- B. For work performed by a subcontractor's own forces, a maximum of ten percent (10%) of the allowable direct costs.
- C. For work performed by a subcontractor, overhead and profit of a maximum of five percent (5%) is allowable by the Contractor for administration of the sub-contract.

Retainage: The District requires a retainage of three and one-half percent (3.5%) of the total contract price, as may be amended by any approved *Change Order*, to be withheld from the Contractor's payments throughout the term of the *Contract Agreement* and payable at the time of final payment after a) full completion of all work to be performed and all requirements established in the *Contract Agreement* and acceptance by the District, b) submittal of all closeout documents, and c) submittal of an affidavit of payment of debts/claims, if requested by the District, for every subcontractor who performed work on the project evidencing they have received final payment of undisputed work and retainage withheld. As a condition of the contract, no more than three and one-half percent (3.5%) shall be retained from the progress payments of any subcontractor by the Contractor until final completion of that portion of the work. Prompt payment of retainage to all subcontractors at final completion of their acceptable work regardless of timing during the contract is mandatory. The Contractor shall, at final completion, ensure no amount of the Contractor's retained funds is allocable to the completed and accepted work of any subcontractor nor to materials or equipment purchased from any supplier unless such amounts are in dispute and the Contractor has not requested payment for such disputed amounts to date. Such amounts in dispute shall be identified on the Contractor's affidavit of payment of debts/claims submitted with final documents.

I think that the italicized words above refer to specific documents in our standard construction contract. They may need to be changed since we are using AIA documents.

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§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. ~~Will this be the Board as a whole or a member(s) of the Board?~~

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§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to give notices of project commencement and take other action to protect the integrity and exclusivity of the project payment bond(s).

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

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§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing land development, zoning, and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

~~Why has all of this language been added back in (starting with "Thereafter")? It was originally deleted from the document presented to the firms.~~

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§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner or its designee shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts, errors, or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. For Work on the critical path to beneficial occupancy of the Project (or defined component thereof) the ten-day period referenced herein is reduced to five (5) days during the 60 days prior to substantial completion as shown on the last schedule properly submitted under § 3.1.9.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.1.4 LIQUIDATED DAMAGES FOR LATE SUBSTANTIAL AND FINAL COMPLETION OF THE WORK.

The Owner and the Contractor agree that time is of the essence and that the Owner will suffer significant damage, hardship, and loss if the Work is not substantially completed within the Contract Time. Damages the Owner will incur as a result of breach of contract by failure to achieve substantial completion are: use of relocatable classrooms; use of alternate sites for the educational program; disruption of class locations; disruption of athletic program; disruption of public service activities planned for the project; loss of rental of the project; security risks due to conglomeration of project workers with additional persons on and near the site; additional safety risks of equipment, vehicles, and unfinished work on the campus during the academic term; general disruption of the teaching and learning process due to project activities during the academic term; moving equipment during the academic term when students and full staff are present; harm to the Owner's reputation and established goodwill among the community, parents, students, and staff due to late delivery of the project; loss of student morale and academic performance due to the ongoing Work during the academic term; harm to the Owner's public relations; disruption and inefficiency of the management of all the Owner's facilities and other current construction projects. The measurement of such damages is difficult. Accordingly, such damages are converted to Liquidated Damages as follows: for each day the Work is not Substantially Complete beyond the Contract Time allowed for Substantial Completion, liquidated damages of \$1000 will be due from the Design-Builder to the Owner; for each day the Work is not Finally Complete beyond the Contract Time allowed for Final Completion, liquidated damages of \$500 will be due from the Design-Builder to the Owner.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 **Weather Delays:** When adverse weather conditions are the basis for a request for additional time, such request shall be documented by data substantiating the weather conditions a) were abnormal for a period of time which could not have been reasonably anticipated; b) had an adverse effect on the work scheduled, and alternate work unaffected by the weather could not have been done; and c) had an adverse effect on the construction schedule such

that the loss of work time will adversely impact the established completion date. The Contractor must make every effort to mitigate the potential effect of the weather on the construction schedule including, but not limited to, rescheduling of subcontractors, pumping water from work areas, rescheduling work hours to alternate work days within the work week, or other such actions. Such time extension request shall be in writing and submitted to the District for approval within ten (10) days from the end of the event causing the impact on the construction schedule. An extension of time not requested within the appropriate time period shall not be considered. The approved extension of time shall be incorporated in the next *Change Order*.

§ 8.2.4 Anticipated Weather Delays: A total of five (5) days per calendar month (non-cumulative) shall be anticipated by the Contractor as "adverse weather," and such time shall not be considered justification for an extension of time. Such anticipated adverse weather days are established only for normally scheduled work days, excluding Saturdays, Sundays and major holidays, unless such adverse weather conditions on those days are severe enough to impact the scheduled work on the following work day. If adverse weather days beyond the five (5) days anticipated are substantiated and the Contractor could not mitigate the impact of the additional adverse weather days, an extension of time may be allowed only to the extent of the actual impact on the last approved construction schedule and only to the extent of one (1) full day of extended time for each full working day of adverse weather conditions which prevented a forty-hour work week within a seven (7) day calendar week. A request for adverse weather extension shall not be allowed after the date established for substantial completion.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been

previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within twenty-one days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated or substantial failure to carry out the Work in accordance with the Design-Build Documents.

How is "substantial" failure defined?

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§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion

or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner an occupancy permit issued by the South Carolina Office of School Facilities and a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature an occupancy permit issued by the South Carolina Office of School Facilities and a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents;
- .3 terms of special warranties required by the Design-Build Documents;
- .4 post-occupancy services to be provided by or through the Design-Builder.

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§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally

responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work either rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected or nonconforming Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the two-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

Does this 2 years take into account the 3 yr performance guarantee after Substantial Completion?

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§ 11.2.2.2 The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work. Same question as above

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§ 11.2.2.3 The two-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2. Same question as above

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§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year two-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work. Same as above

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§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Acceptance of Nonconforming Work may only be evidenced by written agreement specifying the nonconformity and the Owner's informed consent to accept it. Nonconforming Work shall not become accepted Work by inaction or implication.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or; at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit on that executed Work, and costs incurred by reason of such termination.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;

- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract and are expressly included in the performance of the Work covered by the Design-Builder's performance bond.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by law.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. ~~Is this section needed since time related to adverse weather conditions was addressed in §8.2.3 and §8.2.4?~~

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§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work and otherwise available under this Agreement.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 **Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 **Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation. The mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4 located.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Written notice may also be established by acknowledgements and responses exchanged via electronic communications such as electronic mail or any internal messaging functionality of BIM and/or project management software used by the parties for the project.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

Conduct of the ~~Design-Builder's Architect's~~ Principal, Employees, Agents and Representatives

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The safety and security of District staff, students and the general public are of utmost priority to the District. To that end, the Architect shall be responsible for ensuring compliance by the Architect and any employees, agents or representatives of the ~~Design-Builder Architect~~, including all Design and Construction Consultants, to the following:

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- A. No drugs, alcohol, knives, firearms or other weapons on District property, whether or not there is an existing occupied building.
- B. No fraternizing with, threats to, or use of abusive or profane language in the presence of students, parents,

visitors, or District representatives, agents, or employees.

C. **No improper attire, actions or gestures while on any District property.**

No smoking on District property in conformance with Horry County Board of Education policy. Violations of such policy shall result in a civil penalty of up to \$1,000 per occurrence to the individual responsible and/or the Architect for whom the individual is a Principal, employee, agent, or representative.

D. **Secure SLED (State Law Enforcement Division) criminal background checks on all the Architect's Principals, employees, agents, and representatives performing work on District property and contractually require the same of all Design Consultants, their employees, agents, and representatives. No employees, agents or representatives of the Architect and Design Consultants having committed violent crimes, crimes against children, or crimes of moral turpitude are allowed access to the District's premises. Such SLED criminal background checks shall be maintained on file in the offices of the respective Architect and Design Consultant and made available to appropriate District personnel or the District's legal counsel immediately upon request.**

Promotional Materials

The Design Builder shall have the right to include photographic or artistic representations of the design of the Project among the Design Builder's promotional and professional materials. The Design Builder shall be given reasonable access to the completed Project to make such representations. The District shall provide professional credit for the Architect and Design Builder in the District's promotional materials for the Project. The Architect shall not make any representations in promotional and professional materials other than the identification of the District without the District's approval of the written copy prior to submission, printing and distribution. This condition shall survive termination or completion of this Agreement.

Drug-Free Workplace

The Design-Builder Architect and their Architect's Design-Consultants shall be responsible for initiating, maintaining and supervising all drug-free programs in connection with the performance of this Agreement. The drug-free programs shall conform to Title 44, Chapter 107, § 44-107-10 through § 44-107-90 of the South Carolina Code of Laws as may be amended.

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Right Audit Project

The District shall have the right to audit the books and records of the Design-Builder Architect to the extent that the books and records relate to the performance of this Agreement and shall include all pricing and Change Order (Attachment E) data. Such books and records related to the work covered under this Agreement shall be maintained by the Architect for a period of not less than three (3) years from the date of final payment to the Architect under this Agreement. This requirement shall also apply to any Design Consultants performing services under the Architect's direction. Attachment E is a document out of our standard construction contract. Not sure what the appropriate AIA form is.

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The Office of General Services of the State of South Carolina, or any auditor under contract with the District has the right to audit the Design-Builder Architect's records related to any Project incorporated under this Agreement during the time frame stated in the previous paragraph. The Architect shall ensure that all records pertaining to any Project are available for inspection at the location specified by the District within seventy-two (72) hours of notification at no additional cost to the District. This requirement shall survive termination or completion of the Agreement.

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Traffic Control On-Site and Off-Site: The Design-Builder Contractor shall conduct its operations in a manner to not interrupt pedestrian or vehicle traffic except as approved by the District and the South Carolina Department of Transportation. The worksite shall be confined to the smallest area possible allowing maximum use of streets, sidewalks, parking areas or other pedestrian areas and reduce to a minimum any hazard to traffic or pedestrians. The Design-Builder Contractor shall use worker and traffic control signs and devices necessary to comply with Section VI of U.S. Department of Labor, Federal Highway Administration, Manual on Uniform Traffic Control Devices for Streets and Highways (Washington, DC: GPO) as may be amended, to facilitate traffic control on public roads, streets, or highways when work performed obstructs public traffic. When such traffic areas are obstructed to

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any extent by work in progress, workers equipped with flags shall direct vehicle and pedestrian traffic. The workers so designated shall not be assigned any other duties while engaged in directing traffic.

Safety Designee: The Design-Build Contractor shall designate a competent individual at the worksite whose duty shall be the prevention of accidents and the implementation and monitoring of all OSHA construction safety standards and requirements. The competent individual shall serve as spotter where there is exposure of pedestrians, students, parents, or visitors to falling debris and, in addition, shall ensure on a daily basis that all fencing or other safety barriers are in an upright position to prevent ingress and egress to "lay down" areas or work areas by unauthorized individuals.

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Licenses and Permits: During the term of the contract, the Contractor shall be responsible for obtaining and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and/or inspections required by state, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

Iran Divestment Act: The Iran Divestment Act List is a list published by the [State] Board pursuant to Section 11- 57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <http://procurement.sc.gov/PS/PS-irandivestment.phtml>. Consistent with Section 11-57-310(B), the Contractor shall not contract with any person to perform a part of the Work, if, at the time you enter into a subcontract, that person is on the then-current version of the Iran Divestment Act List

Immigrant Workers: The "South Carolina Illegal Immigration and Reform Act" requires all employers to verify the legal status of new employees and prohibits employment of any worker who is not legally in this country and authorized to work. Effective January 1, 2012, all South Carolina employers are required to enroll in the U.S. Department of Homeland Security's E-Verify program and verify the status of new employees within three business days, using E-Verify. Failure to use E-Verify to verify new hires will result in probation for the employer or suspension/revocation of the employer's business licenses.

S.C. Code § 8-14-40 Compliance: Design-Build certifies that the Design-Build will comply with the requirements of S.C. Code § 8-14-10 *et seq.* and agrees to provide to the Owner any documentation required to establish either: (a) the applicability of that chapter to the contractor, subcontractor, and sub-subcontractor; or (b) the compliance with this that chapter by the contractor and any subcontractor or sub-subcontractor.

Business license, insurance, and bonds must be obtained prior to issuance of a Notice to Proceed. Failure to obtain these within thirty (30) days of execution of the agreement makes this Agreement voidable at the option of the Owner.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- 1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Build
- 2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed;
- 3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- 4
- 5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

« »

- 6 Other:

« »

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

John K. Gardner, Chief Financial Officer
(Printed name and title)

DESIGN-BUILDER (Signature)

«Robert Ferris, Authorized Member »« »
(Printed name and title)

F
E
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W
S

Sheri L. Wainscott

From: Clark, Brad <Brad.Clark@BBandT.com>
Sent: Tuesday, November 17, 2015 5:31 PM
To: Keith R. Powell; Robbie Ferris
Subject: RE: HCS | Exhibit B

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,

Can you please send me the Causes of Loss Form referenced in the Builders Risk Coverage Form and all applicable endorsements/exclusions? I would like to review the excluded perils as the policy wording in the attachments you send provides very limited coverage for the exposure.

Thank you,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Keith R. Powell [mailto:kpowell@childs-halligan.net]
Sent: November 17, 2015 1:22 PM
To: Robbie Ferris
Cc: Clark, Brad
Subject: RE: HCS | Exhibit B

Here are the forms. The BR policy talks about "your" property, but the IRF won't let HCS name a nongovernment entity as an insured or loss payee.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Robbie Ferris [mailto:RFerris@sfla.biz]
Sent: Tuesday, November 17, 2015 12:22 PM
To: Keith R. Powell

Cc: Clark, Brad (Brad.Clark@BBandT.com)

Subject: FW: HCS | Exhibit B

Keith,

Apparently our insurance company sent me an email about this a few days ago that I never sent you.

Sorry!!

Feel free to call Brad directly to discuss his concerns.

Robbie

Robbie/Mike,

After reviewing this updated draft, I still see the same potential problem areas as previously outlined. There are some significant gaps in the protection of First Floor and subcontractors with the language used for Builder's Risk coverage, specifically:

- Design-Builder and subcontractors of all tiers should have insured status on the Builder's Risk policy in order to ensure your interests are protected.
- HCS should agree to waive subrogation against First Floor and subcontractors of all tiers for losses covered by the Builder's Risk policy. This waiver will prevent HCS' insurer from seeking subrogation against First Floor's or a subcontractor's GL coverage if a contractor caused damage to the project.
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- Other areas as outlined in the attached "Builder's Risk Considerations".

Additional Insured status is still referenced for Pollution Liability coverage even though that coverage is not required by HCS. I recommend striking this language since First Floor is not required to carry Pollution Liability by HCS. As discussed previously, BB&T still recommends that you purchase Pollution Liability coverage to protect First Floor.

Thanks,

Brad Clark, CIC

Vice President

BB&T Insurance Services

4309 Emperor Blvd., Suite 300

Durham, NC 27703

919.281.4545 Direct

678.612.7403 Cell

brad.clark@bbandt.com

mailcode: 120-80-01-15

From: Peeples, Kenneth

Sent: November 17, 2015 10:30 AM

To: Blanchard, Kathy; Clark, Brad

Subject: Fwd: Hcs

Ken Peeples

919-281-4510 office

919-215-9779 cell

Via iPhone

Begin forwarded message:

From: Robbie Ferris <RFerris@sfla.biz>
Date: November 17, 2015 at 9:55:52 AM EST
To: Nancy Zabrud <NZabrud@sfla.biz>, Mike Wawrzyniak <mwawrzyniak@sfla.biz>, "Kenneth J. Peeples" <kpeeples@bbandt.com>, Aaron Thomas <athomas@metconus.com>, Mike Richter <mrichter@taloving.com>
Subject: Fwd: Hcs

Guys,
See attached exhibit B in the email from Keith Powell.
Robbie

Sent from my iPhone

Begin forwarded message:

From: "Keith R. Powell" <kpowell@childs-halligan.net>
Date: November 17, 2015 at 9:47:32 AM EST
To: "Robbie Ferris (RFerris@sfla.biz)" <RFerris@sfla.biz>, Mark Wolfe <MWolfe002@horrycountyschools.net>, "Ara Heinz (AHeinz@horrycountyschools.net)" <AHeinz@horrycountyschools.net>, John Gardner <JGardner@horrycountyschools.net>, Kenneth Generette <KGenerette@horrycountyschools.net>, "rmaxey@horrycountyschools.net" <rmaxey@horrycountyschools.net>
Cc: "William F. Halligan" <bhalligan@childs-halligan.net>
Subject: RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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On Nov 17, 2015, at 7:43 AM, Robbie Ferris <RFerris@sfla.biz> wrote:

Keith

Can you send the latest version of the contract for review

Robbie

Sent from my iPhone

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Feel free to call Brad directly to discuss his concerns.
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Vice President
BB&T Insurance Services
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brad.clark@bbandt.com
mailcode: 120-80-01-15

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Sent: November 17, 2015 10:30 AM
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Subject: Fwd: Hcs

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<JGardner@horrycountyschools.net>, Kenneth Generette
<KGenerette@horrycountyschools.net>,

"rmaxey@horrycountyschools.net"
<rmaxey@horrycountyschools.net>
Cc: "William F. Halligan" <bhalligan@childs-halligan.net>
Subject: RE: Hcs

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Columbia, South Carolina
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Keith

Can you send the latest version of the contract for review

Robbie

Sent from my iPhone

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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Wednesday, November 18, 2015 10:04 AM
To: Keith R. Powell
Subject: hcs draw request.xlsx
Attachments: hcs draw request.xlsx

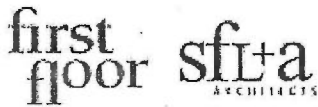
Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith, I should have put the names on the schools. See the new attachment. Also I made a \$10,000 typo on the Myrtle beach MS that I send you last night. This version is corrected. The amount in this spreadsheet aligns with our schedule of values so hopefully these amounts will be ok with you but if not we could round it to 1,100,000 per school. Rounding just means we would have to re do the schedule of values and it would get a little messy with subs.

I am planning on being at HCS at 3 to sign everything unless I hear otherwise from you.

Robbie



Robert W. Ferris, AIA, REFP, LEED AP
CEO/President
333 Fayetteville Street, Suite 225
Raleigh, NC 27601
Cell: 919.610.2251
Fax: 919.573.6355
rferris@sfla.biz
www.sfla.biz

Sheri L. Wainscott

From: Keith R. Powell
Sent: Wednesday, November 18, 2015 10:14 AM
To: Robbie Ferris
Subject: Re: hcs draw request.xlsx
Attachments: image001.jpg

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Thanks. Discussing all (finally) with HCS today.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
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<image001.jpg>

Robert W. Ferris, AIA, REFP, LEED AP
CEO/President
333 Fayetteville Street, Suite 225
Raleigh, NC 27601
Cell: 919.610.2251
Fax: 919.573.6355
rferris@sfla.biz
www.sfla.biz

<hcs draw request.xlsx>

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Sent: Tuesday, November 17, 2015 12:22 PM
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Cc: Clark, Brad (Brad.Clark@BBandT.com)
Subject: FW: HCS | Exhibit B

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Keith R. Powell
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REDACTED

From: Charles Jordan <charlesbjordan@hotmail.com>

Date: November 13, 2015 at 2:23:08 PM EST

To: "joedefeo@horrycountyschools.net" <joedefeo@horrycountyschools.net>

Cc: "wlhuggins@wpde.com" <wlhuggins@wpde.com>, "cbyun@thesunnews.com" <cbyun@thesunnews.com>

Subject: Horry County School Construction

Charles B. Jordan
612 Lakeside Drive
Conway, SC 29526

VIA EMAIL: joedefeo@horrycountyschools.net
and Certified Mail

November 13, 2015

Joe Defeo
PO Box 260005
Conway, SC 29528-6005

Dear Board Member:

As a citizen of Horry County I am very disappointed with the Board's decision to spend the majority of the funds available for new school design and construction with the high bidder on one intermediate school, three middle schools, and one elementary school. I seriously doubt that funds will be available in the near future for a much needed high school in the Carolina Forest area without significant tax increases. Also, I am disappointed that the Board dropped the 5 year experience requirement and the bonding requirement of the entire contract.

First, with my education, certification, and experience, I am qualified to express a reasonably accurate opinion of the situation that exists. I am a native of Horry County. I attended the public school system here, graduated from The University of South Carolina in Engineering with an emphasis in mechanical engineering, was manager of commercial power use department for Duke Energy in Charlotte, obtained my professional engineering registration in both North and South Carolina, and was a construction executive in Horry County for over forty years. During that time, I have had the ultimate construction responsibility for numerous schools in North and South Carolina. Also, the Horry County School System has expressed confidence in me by appointing me to several committees including the selection committee for two of its previous managers in the construction department and to serve on a construction mediation case.

The cost of construction of Ocean Bay Middle, Holmestown Road Elementary, Black Water Middle and River Oaks Elementary combined was approximately \$68,714,000 at that time. Adjust the cost upward 1) to reflect 10% for design, testing, and miscellaneous fees, 2) to reflect inflation per The Engineering News-Record cost data for Atlanta, 3) to add for another school, and 4) to add FF&E for the five schools, then the present cost as of July 2015 would be approximately \$133,658,000.

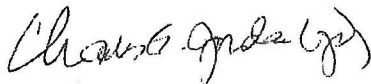
This is over \$105,000,000 premium to accept First Floor Proposal. Assume that these funds are borrowed at 4.5% for 20 years (highest rate since this is an add-on), then the additional cost including interest would be \$159,000,000 over the next 20 years.

Joe Defeo
November 13, 2015
Page 2

On August 21, 2015 HCS issued addendum #7 stating, "HCS agrees that design liability need not be bonded by the A312 to the extent covered by the designer's professional responsibility insurance." This IS totally unacceptable. The bond coverage cannot be cancelled or dropped for any reason. It guarantees performance by the Design/Build Company. If the claims made in the Design/Build Company's proposal are not met, then the bonding company is responsible. However, professional liability insurance is to protect the professional and will offer coverage if it exists. Coverage will immediately stop to exist if the policy is cancelled or not renewed by either the professional or the insurance company. HCS will have no protection against bad design if this occurred.

As mentioned earlier, I have been responsible to build many schools especially in Horry County. Never have I seen so many irregularities. I implore the Board to reconsider issuing a contract for these school buildings for \$240,000,000.

Sincerely,



Charles B. Jordan

c: W.L. Huggins, President and CEO
WPDE
wlhuggins@wpde.com

Claire Byun
The Sun News
cbyun@thesunnews.com

Sheri L. Wainscott

From: Clark, Brad <Brad.Clark@BBandT.com>
Sent: Wednesday, November 18, 2015 2:17 PM
To: Keith R. Powell; Robbie Ferris (RFerris@sfla.biz)
Subject: RE: HCS | Exhibit B

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Thank you Keith.

I will review the coverage and inform Robbie./ Firstfloor Energy Positive LLC ("FFEP") of any concerns.

If you would like, I will pursue a Builder's Risk coverage option in the voluntary marketplace that will list HCS, FFEP, and subcontractors as named insureds. HCS can compare this to the premium and coverage available through the IRF.

Do you know what wind/named storm deductible the IRF uses?

Thanks,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Keith R. Powell [mailto:kpowell@childs-halligan.net]
Sent: November 18, 2015 12:56 PM
To: Clark, Brad; Robbie Ferris (RFerris@sfla.biz)
Subject: FW: HCS | Exhibit B
Importance: High

Attached info for your use.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Ara Heinz [mailto:AHeinz@horrycountyschools.net]
Sent: Wednesday, November 18, 2015 12:40 PM
To: Keith R. Powell
Subject: RE: HCS | Exhibit B

Mr. Powell,

Sorry for the delay. In a mtg this morning and dr's appt right after. Let me know if you need anything else.

Regards,
Ara

Ara Heinz | Procurement Services | P: 843/488-6930
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526
Website: Procurement.horrycountyschools.net



From: Keith R. Powell [mailto:kpowell@childs-halligan.net]
Sent: Tuesday, November 17, 2015 6:39 PM
To: Ara Heinz
Subject: Fwd: HCS | Exhibit B

Ara - can you get your irf policy to me? I know you sent two excerpts in the summer but the insurance agent for ffep needs to see it all. Thanks.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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Begin forwarded message:

From: "Clark, Brad" <Brad.Clark@BBandT.com>
Date: November 17, 2015 at 5:30:59 PM EST
To: "Keith R. Powell" <kpowell@childs-halligan.net>, Robbie Ferris <RFerris@sfla.biz>
Subject: RE: HCS | Exhibit B

Keith,

Can you please send me the Causes of Loss Form referenced in the Builders Risk Coverage Form and all applicable endorsements/exclusions? I would like to review the excluded perils as the policy wording in the attachments you send provides very limited coverage for the exposure.

Thank you,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Keith R. Powell [<mailto:kpowell@childs-halligan.net>]
Sent: November 17, 2015 1:22 PM
To: Robbie Ferris
Cc: Clark, Brad
Subject: RE: HCS | Exhibit B

Here are the forms. The BR policy talks about "your" property, but the IRF won't let HCS name a nongovernment entity as an insured or loss payee.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Robbie Ferris [<mailto:RFerris@sfla.biz>]
Sent: Tuesday, November 17, 2015 12:22 PM
To: Keith R. Powell
Cc: Clark, Brad (Brad.Clark@BBandT.com)
Subject: FW: HCS | Exhibit B

Keith,
Apparently our insurance company sent me an email about this a few days ago that I never sent you. Sorry!!
Feel free to call Brad directly to discuss his concerns.
Robbie

Robbie/Mike,

After reviewing this updated draft, I still see the same potential problem areas as previously outlined. There are some significant gaps in the protection of First Floor and subcontractors with the language used for Builder's Risk coverage, specifically:

- Design-Builder and subcontractors of all tiers should have insured status on the Builder's Risk policy in order to ensure your interests are protected.
- HCS should agree to waive subrogation against First Floor and subcontractors of all tiers for losses covered by the Builder's Risk policy. This waiver will prevent HCS' insurer from seeking

subrogation against First Floor's or a subcontractor's GL coverage if a contractor caused damage to the project.

- The contract states that HCS has the responsibility to pay losses not covered by deductibles, but the contract does not state anything regarding excluded perils, inadequate limits, or property not covered. These can all be significant exposures.
- Other areas as outlined in the attached "Builder's Risk Considerations".

Additional Insured status is still referenced for Pollution Liability coverage even though that coverage is not required by HCS. I recommend striking this language since First Floor is not required to carry Pollution Liability by HCS. As discussed previously, BB&T still recommends that you purchase Pollution Liability coverage to protect First Floor.

Thanks,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Peeples, Kenneth
Sent: November 17, 2015 10:30 AM
To: Blanchard, Kathy; Clark, Brad
Subject: Fwd: Hcs

Ken Peeples
919-281-4510 office
919-215-9779 cell
Via iPhone

Begin forwarded message:

From: Robbie Ferris <RFerris@sfla.biz>
Date: November 17, 2015 at 9:55:52 AM EST
To: Nancy Zabrud <NZabrud@sfla.biz>, Mike Wawrzyniak
<mwawrzyniak@sfla.biz>, "Kenneth J. Peeples" <kpeeples@bbandt.com>,
Aaron Thomas <athomas@metconus.com>, Mike Richter
<mrichter@taloving.com>
Subject: Fwd: Hcs

Guys,
See attached exhibit B in the email from Keith Powell.
Robbie

Sent from my iPhone

Begin forwarded message:

From: "Keith R. Powell" <kpowell@childs-halligan.net>
Date: November 17, 2015 at 9:47:32 AM EST
To: "Robbie Ferris (RFerris@sfla.biz)" <RFerris@sfla.biz>, Mark Wolfe <MWolfe002@horrycountyschools.net>, "Ara Heinz (AHeinz@horrycountyschools.net)" <AHeinz@horrycountyschools.net>, John Gardner <JGardner@horrycountyschools.net>, Kenneth Generette <KGenerette@horrycountyschools.net>, "rmaxey@horrycountyschools.net" <rmaxey@horrycountyschools.net>
Cc: "William F. Halligan" <bhalligan@childs-halligan.net>
Subject: RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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On Nov 17, 2015, at 7:43 AM, Robbie Ferris <RFerris@sfla.biz> wrote:

Keith

Can you send the latest version of the contract for review

Robbie

Sent from my iPhone

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prohibited. If you received this message in error, please delete the material from your system without reading the content and notify the sender immediately of the inadvertent transmission.

Sheri L. Wainscott

From: Keith R. Powell
Sent: Wednesday, November 18, 2015 2:20 PM
To: Clark, Brad; Robbie Ferris (RFerris@sfla.biz)
Subject: RE: HCS | Exhibit B

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

I'm talking to them about a lot of last minute edits this afternoon and will include the builder-provided BR policy as a topic on the list. The terms provide for FFEP to place coverages after execution so we have a few days, although of course next week is truncated for business purposes.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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Sent: Wednesday, November 18, 2015 2:17 PM
To: Keith R. Powell; Robbie Ferris (RFerris@sfla.biz)
Subject: RE: HCS | Exhibit B

Thank you Keith.

I will review the coverage and inform Robbie / Firstfloor Energy Positive LLC ("FFEP") of any concerns.

If you would like, I will pursue a Builder's Risk coverage option in the voluntary marketplace that will list HCS, FFEP, and subcontractors as named insureds. HCS can compare this to the premium and coverage available through the IRF.

Do you know what wind/named storm deductible the IRF uses?

Thanks,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Keith R. Powell [<mailto:kpowell@childs-halligan.net>]
Sent: November 18, 2015 12:56 PM
To: Clark, Brad; Robbie Ferris (RFerris@sfla.biz)
Subject: FW: HCS | Exhibit B
Importance: High

Attached info for your use.

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From: Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]
Sent: Wednesday, November 18, 2015 12:40 PM
To: Keith R. Powell
Subject: RE: HCS | Exhibit B

Mr. Powell,

Sorry for the delay. In a mtg this morning and dr's appt right after. Let me know if you need anything else.

Regards,
Ara

Ara Heinz | Procurement Services | P: 843/488-6930
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526
Website: Procurement.horrycountyschools.net



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Sent: Tuesday, November 17, 2015 6:39 PM
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Subject: Fwd: HCS | Exhibit B

Ara - can you get your irf policy to me? I know you sent two excerpts in the summer but the insurance agent for ffep needs to see it all. Thanks.

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Date: November 17, 2015 at 9:55:52 AM EST
To: Nancy Zabrud <NZabrud@sfla.biz>, Mike Wawrzyniak
<mwawrzyniak@sfla.biz>, "Kenneth J. Peeples" <kpeeples@bbandt.com>,
Aaron Thomas <athomas@metconus.com>, Mike Richter
<mrichter@taloving.com>
Subject: Fwd: Hcs

Guys,
See attached exhibit B in the email from Keith Powell.
Robbie

Sent from my iPhone

Begin forwarded message:

From: "Keith R. Powell" <kpowell@childs-halligan.net>
Date: November 17, 2015 at 9:47:32 AM EST
To: "Robbie Ferris (RFerris@sfla.biz)" <RFerris@sfla.biz>, Mark
Wolfe <MWolfe002@horrycountyschools.net>, "Ara Heinz
(AHeinz@horrycountyschools.net)"
<AHeinz@horrycountyschools.net>, John Gardner
<JGardner@horrycountyschools.net>, Kenneth Generette
<KGenerette@horrycountyschools.net>,
"rmaxey@horrycountyschools.net"
<rmaxey@horrycountyschools.net>
Cc: "William F. Halligan" <bhalligan@childs-halligan.net>
Subject: RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on
HCS comments on 141 and Ex A.

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wrote:

Keith

Can you send the latest version of the contract for review

Robbie

Sent from my iPhone

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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Wednesday, November 18, 2015 3:07 PM
To: Keith R. Powell
Subject: Horry

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,
How are you feeling about signing contracts on Thursday, is Friday more realistic. I am trying to plan my day. I would hate to push it out until Monday but I can also do it on Monday since I will be there anyway for the board meeting at 4 o'clock

Sent from my iPhone

Sheri L. Wainscott

From: Keith R. Powell
Sent: Wednesday, November 18, 2015 3:09 PM
To: Robbie Ferris
Subject: Re: Horry

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

I'll tell you after this call I'm about to start

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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> On Nov 18, 2015, at 3:06 PM, Robbie Ferris <RFerris@sfla.biz> wrote:

>
> Keith,
> How are you feeling about signing contracts on Thursday, is Friday more realistic. I am trying to plan my day. I would hate to push it out until Monday but I can also do it on Monday since I will be there anyway for the board meeting at 4 o'clock

>
> Sent from my iPhone

Sheri L. Wainscott

From: Keith R. Powell
Sent: Wednesday, November 18, 2015 5:04 PM
To: Robbie Ferris
Subject: Fwd: Horry

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Let's do Friday. I got assorted instructions today that will take another round of editing and review tomorrow.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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Begin forwarded message:

From: Robbie Ferris <RFerris@sfla.biz>
Date: November 18, 2015 at 3:06:36 PM EST
To: "kpowell@childs-halligan.net" <kpowell@childs-halligan.net>
Subject: Horry

Keith,

How are you feeling about signing contracts on Thursday, is Friday more realistic. I am trying to plan my day. I would hate to push it out until Monday but I can also do it on Monday since I will be there anyway for the board meeting at 4 o'clock

Sent from my iPhone

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Wednesday, November 18, 2015 5:07 PM
To: Keith R. Powell
Subject: Re: Horry

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Will do

No worries

Please get me a final draft as soon as possible so I can run it by the bonding company

Sent from my iPhone

On Nov 18, 2015, at 5:04 PM, Keith R. Powell <kpowell@childs-halligan.net> wrote:

Let's do Friday. I got assorted instructions today that will take another round of editing and review tomorrow.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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Begin forwarded message:

From: Robbie Ferris <RFerris@sfla.biz>
Date: November 18, 2015 at 3:06:36 PM EST
To: "kpowell@childs-halligan.net" <kpowell@childs-halligan.net>
Subject: Horry

Keith,

How are you feeling about signing contracts on Thursday, is Friday more realistic. I am trying to plan my day. I would hate to push it out until Monday but I can also do it on Monday since I will be there anyway for the board meeting at 4 o'clock

Sent from my iPhone

Sheri L. Wainscott

From: Keith R. Powell
Sent: Wednesday, November 18, 2015 6:13 PM
To: Robbie Ferris (RFerris@sfla.biz)
Subject: HCS contracts forms
Attachments: Standard HCS Const Contract Lang.pdf; 673757_2 141 main - Working Draft - (1).docx; 673449 EX A.docx

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Robbie – Following a lengthy discussion with the HCS, attached are the two main documents marked up again. Also attached is a PDF I just got containing information about two topics referenced in the drafts, which I wish had been provided months ago.

You should carefully review these, especially highlighted areas. Three key issues:

1. HCS wants to maintain the May 1 substantial completion date that is in the consciousness of the public and the board, unless and until the Board agrees to a change.
2. HCS also wants to be able to use the designs as prototypes for the future, another topic which I wish had been brought up sooner but one to which they attach obvious importance. They wanted to “own the plans” but I have tried to convert this to a license to use it as a prototype, recognizing the SC Architecture board’s policy on the same requires re-sealing of re-used plans anyway, and also recognizing that there is no need for HCS to “own” the copyright to your work to the extent you may want to copy your own work elsewhere.
3. HCS does not want to pay for “proposal prep” although they are agreeing to being billed for the part of your work that is carrying forward into the end product, so you will see that noted.

I realize we will need to discuss these issues tomorrow, which is why planning to sign something at 3 pm probably wouldn’t work given that I have to make 5 sets to cover all the projects, and can’t do that until terms are settled.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Ara Heinz [mailto:AHeinz@horrycountyschools.net]
Sent: Wednesday, November 18, 2015 5:58 PM
To: Keith R. Powell; John Gardner; Mark Wolfe
Subject: HCS Standard Construction Contract Language

All,

REDACTED

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Wednesday, November 18, 2015 9:48 PM
To: Keith R. Powell
Cc: Aaron Thomas (athomas@metconus.com)
Subject: RE: HCS contracts forms

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,

My thoughts are outlined below in red. I have done my best but these requests cost money that we don't have in the job.

Robbie

From: Keith R. Powell [mailto:kpowell@childs-halligan.net]
Sent: Wednesday, November 18, 2015 6:13 PM
To: Robbie Ferris
Subject: HCS contracts forms
Importance: High

Robbie – Following a lengthy discussion with the HCS, attached are the two main documents marked up again. Also attached is a PDF I just got containing information about two topics referenced in the drafts, which I wish had been provided months ago.

You should carefully review these, especially highlighted areas. Three key issues:

1. HCS wants to maintain the May 1 substantial completion date that is in the consciousness of the public and the board, unless and until the Board agrees to a change. I don't feel like this request is reasonable in addition the schedule is not totally within my control. Our subcontractors bid the work in accordance with the schedule we published. Our schedule was in accordance with the RFP. To accelerate the schedule our subs will have to work nights and weekends or supplement their staff, which is costly.
I assume this is would be very distasteful to the Board but after contracts are signed we would be willing to put together a cost to accelerate the projects and complete the work by May 1st. Assembling a cost to accelerate and developing a new schedule would take tremendous effort and time so it would need to be done after contracts are executed. I know you had your reasons but I wish HCS had signed the permit applications when we had requested, this would have made your request to accelerate the project much easier to manage. I am so very sorry but the only way I know to accelerate the schedule.
2. HCS also wants to be able to use the designs as prototypes for the future, another topic which I wish had been brought up sooner but one to which they attach obvious importance. They wanted to "own the plans" but I have tried to convert this to a license to use it as a prototype, recognizing the SC Architecture board's policy on the same requires re-sealing of re-used plans anyway, and also recognizing that there is no need for HCS to "own" the copyright to your work to the extent you may want to copy your own work elsewhere. Our company policy is that we do not grant ownership of drawings unless we are paid up front for those rights. We could quote you a fee for that however what we typically see is at the time of re-use we would negotiate a contract for the re-use of the plans. We typically charge re-use fee of approximately 6% for a high performance building. In addition, we would need to approve the contractor and key mechanical and electrical subcontractors.
3. HCS does not want to pay for "proposal prep" although they are agreeing to being billed for the part of your work that is carrying forward into the end product, so you will see that noted. While HCS has no obligation to

pay for proposal prep as we requested the AIA document allows for proposal prep work to be invoiced at contract signing because there is a recognition of the massive effort a design build proposal takes. If we must wait to submit for proposal prep and SD's with our first application for payment we cannot object however I would humbly request that if HCS has the ability to pay us for proposal prep, SDs and preconstruction in accordance with the standard AIA contract that HCS allow us to invoice when the contract is signed. If you allow us to invoice at contract signing and if HCS can commit to us receiving payment within two weeks of the contract signing you can simply add \$5000.00 per job to the owner contingency. This is approximately equal to the interest we would pay our bank if we borrowed the money on our line and if we had to wait for payment in accordance with the normal payment cycle in the contract.

I realize we will need to discuss these issues tomorrow, which is why planning to sign something at 3 pm probably wouldn't work given that I have to make 5 sets to cover all the projects, and can't do that until terms are settled.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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REDACTED

Sheri L. Wainscott

From: Keith R. Powell
Sent: Wednesday, November 18, 2015 10:43 PM
To: William F. Halligan
Subject: Fwd: HCS contracts forms
Attachments: image001.png

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

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Begin forwarded message:

From: Robbie Ferris <RFerris@sfla.biz>
Date: November 18, 2015 at 9:47:49 PM EST
To: "Keith R. Powell" <kpowell@childs-halligan.net>
Cc: "Aaron Thomas (athomas@metconus.com)" <athomas@metconus.com>
Subject: RE: HCS contracts forms

Keith,
My thoughts are outlined below in red. I have done my best but these requests cost money that we don't have in the job.
Robbie

From: Keith R. Powell [<mailto:kpowell@childs-halligan.net>]
Sent: Wednesday, November 18, 2015 6:13 PM
To: Robbie Ferris
Subject: HCS contracts forms
Importance: High

Robbie – Following a lengthy discussion with the HCS, attached are the two main documents marked up again. Also attached is a PDF I just got containing information about two topics referenced in the drafts, which I wish had been provided months ago.

You should carefully review these, especially highlighted areas. Three key issues:

1. HCS wants to maintain the May 1 substantial completion date that is in the consciousness of the public and the board, unless and until the Board agrees to a change. I don't feel like this request is reasonable in addition the schedule is not totally within my control. Our subcontractors bid the work in accordance with the schedule we published. Our schedule was in accordance with the RFP. To accelerate the schedule our subs will have to work nights and weekends or supplement their staff, which is costly.
I assume this would be very distasteful to the Board but after contracts are signed we would be willing to put together a cost to accelerate the projects and complete the work by May 1st.
Assembling a cost to accelerate and developing a new schedule would take tremendous effort and time so it would need to be done after contracts are executed. I know you had your reasons but I wish HCS had signed the permit applications when we had requested, this would have made your request to accelerate the project much easier to manage. I am so very sorry but the only way I know to accelerate the schedule.
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I realize we will need to discuss these issues tomorrow, which is why planning to sign something at 3 pm probably wouldn't work given that I have to make 5 sets to cover all the projects, and can't do that until terms are settled.

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From: Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]
Sent: Wednesday, November 18, 2015 5:58 PM

REDACTED

Sheri L. Wainscott

From: Keith R. Powell
Sent: Wednesday, November 18, 2015 10:53 PM
To: Robbie Ferris
Subject: Re: HCS contracts forms

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Thank you for your prompt reply to the positions taken by our client. I hope your comments will be useful information for moving to a resolution of these issues tomorrow.

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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Thursday, November 19, 2015 9:38 AM
To: Keith R. Powell
Subject: Re: Horry

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,

I just realized that the contract says we have to pay our subcontractors all of their retainage as the work progresses but that we cannot bill for that retainage. That means we will have to front 3 1/2% of the contract which is millions of dollars. Is that really your intent, is there anyway we can get that relaxed?

Sent from my iPhone

> On Nov 18, 2015, at 3:08 PM, Keith R. Powell <kpowell@childs-halligan.net> wrote:

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> I'll tell you after this call I'm about to start

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>> anyway for the board meeting at 4 o'clock

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>> Sent from my iPhone

Sheri L. Wainscott

From: Keith R. Powell
Sent: Thursday, November 19, 2015 10:36 AM
To: Robbie Ferris
Cc: Aaron Thomas (athomas@metconus.com); William F. Halligan
Subject: RE: HCS contracts forms
Attachments: Sealing and Direct Supervision Policy.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Robbie – I may be interrupted as I work right now, so I'll call you back when I know I can stay online.

For #2, I think some middle ground can be reached. The HCS noted that they wished to engage in this program with a common "conceptual" design, and keep using that concept. That common design has now evolved into the FFEP design instead of the one adopted last year by the board – and FFEP has spent a lot of time explaining why this is the evolution or correction of the published HCS design into what you are about to build. HCS essentially wants to be able to consider your expression of the requirements as the new "conceptual" design for future projects. Under the SC Architecture "sealing & direct supervision policy" (attached) the HCS would have little use for anything beyond the conceptual and SD work, since any architect would have to invest the time to do personal supervision of the design for any future project. Under the SC policy, they could not just "re-use" your CD set. Thus, to try to satisfy everybody, could we look at a license to use your proposed design as submitted in the RFP response, including your programming consultant's "updating" or "fixing" of the HCS prototype, but not necessarily the DD and CD documents that you prepare for these 5 specific iterations of that concept? Take another look at the actual language of the contract draft I sent and see if this accomplishes this middle ground. The SC Architecture board used to have a freestanding "prototypical design policy" but I guess it has morphed into the "sealing and direct supervision policy." We can mention this policy in the contract if needed, but this is what I had in mind trying to hit a middle ground with my suggested language.

On #1 (schedule) – I have no news yet and solving this is my priority today.

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From: Robbie Ferris [mailto:RFerris@sfla.biz]
Sent: Wednesday, November 18, 2015 9:48 PM
To: Keith R. Powell
Cc: Aaron Thomas (athomas@metconus.com)
Subject: RE: HCS contracts forms

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Sent: Wednesday, November 18, 2015 6:13 PM
To: Robbie Ferris
Subject: HCS contracts forms
Importance: High

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Sheri L. Wainscott

From: Keith R. Powell
Sent: Thursday, November 19, 2015 12:06 PM
To: Robbie Ferris
Subject: RE: Horry

Follow Up Flag: Follow up
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Categories: Red Category

This is the statute - obviously the result of good lobbying by subcontractors: "SECTION 11-35-3030. Bond and security. ... (4) Retention. (b) Release of Retained Funds. When the work to be performed ... is to be performed by ... a prime contractor and multiple subcontractors, the work contracted to be done by each individual contractor or subcontractor is considered a separate division of the contract for the purpose of retention. As each division of the contract is certified as having been completed, that portion of the retained funds which is allocable to the completed division of the contract must be released forthwith to the prime contractor, who, within ten days of its receipt, shall release to the subcontractor responsible for the completed work the full amount of retention previously withheld from him by the prime contractor."

In effect there are two pots of retainage that do not mix. The Owner's retainage on the DB is essentially treated as a separate matter from the last 3.5% on each sub's amount in the Schedule of Values. HCS would have to give up its retainage leverage over the DB if it allowed the DB retainage to be reduced as subs are paid in full. I sense they have no interest in that. It would mainly be between the DB and the sub as to when that sub has completed its contract, however.

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Sent: Thursday, November 19, 2015 9:38 AM
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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Thursday, November 19, 2015 12:16 PM
To: Keith R. Powell
Subject: Re: Horry

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Thank you, let me know status of things the same as you find out

Sent from my iPhone

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Subject: FW: HCS contracts forms

Importance: High

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4. I can't make any progress on the retainage issue.
5. Everyone is relieved there has been no protest.

I think we ought to plan to do this execution meeting on Monday. I would like to get all the terms settled by mid-day tomorrow and then be able to create and circulate the final sets of all 5 projects on Friday afternoon.

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Sent: Thursday, November 19, 2015 12:54 PM
To: Keith R. Powell
Cc: Aaron Thomas (athomas@metconus.com); mrichter@taloving.com
Subject: RE: HCS contracts forms

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,

Ok, I suggest we bring the schedule issue to the board Monday night and we sign the contracts after the board meeting. Hopefully the board will agree to pushing the schedule out. I honestly can't imagine them not agreeing that since we have been delayed we should push the end date out.

From: Keith R. Powell [<mailto:kpowell@childs-halligan.net>]
Sent: Thursday, November 19, 2015 12:30 PM
To: Robbie Ferris
Subject: FW: HCS contracts forms
Importance: High

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From: Robbie Ferris <RFerris@sfla.biz>
Sent: Thursday, November 19, 2015 1:03 PM
To: Keith R. Powell
Cc: Aaron Thomas (athomas@metconus.com); William F. Halligan
Subject: RE: HCS contracts forms

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

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Sent: Thursday, November 19, 2015 10:36 AM
To: Robbie Ferris
Cc: Aaron Thomas (athomas@metconus.com); William F. Halligan
Subject: RE: HCS contracts forms

Robbie – I may be interrupted as I work right now, so I'll call you back when I know I can stay online.

For #2, I think some middle ground can be reached. The HCS noted that they wished to engage in this program with a common "conceptual" design, and keep using that concept. That common design has now evolved into the FFEP design instead of the one adopted last year by the board – and FFEP has spent a lot of time explaining why this is the evolution or correction of the published HCS design into what you are about to build. HCS essentially wants to be able to consider your expression of the requirements as the new "conceptual" design for future projects. Under the SC Architecture "sealing & direct supervision policy" (attached) the HCS would have little use for anything beyond the conceptual and SD work, since any architect would have to invest the time to do personal supervision of the design for any future project. Under the SC policy, they could not just "re-use" your CD set. Thus, to try to satisfy everybody, could we look at a license to use your proposed design as submitted in the RFP response, including your programming consultant's "updating" or "fixing" of the HCS prototype, but not necessarily the DD and CD documents that you prepare for these 5 specific iterations of that concept? Take another look at the actual language of the contract draft I sent and see if this accomplishes this middle ground. The SC Architecture board used to have a freestanding "prototypical design policy" but I guess it has morphed into the "sealing and direct supervision policy." We can mention this policy in the contract if needed, but this is what I had in mind trying to hit a middle ground with my suggested language.

On #1 (schedule) – I have no news yet and solving this is my priority today.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Robbie Ferris [mailto:RFerris@sfla.biz]
Sent: Wednesday, November 18, 2015 9:48 PM
To: Keith R. Powell
Cc: Aaron Thomas (athomas@metconus.com)
Subject: RE: HCS contracts forms

Keith,

My thoughts are outlined below in red. I have done my best but these requests cost money that we don't have in the job.

Robbie

From: Keith R. Powell [mailto:kpowell@childs-halligan.net]
Sent: Wednesday, November 18, 2015 6:13 PM
To: Robbie Ferris
Subject: HCS contracts forms
Importance: High

Robbie – Following a lengthy discussion with the HCS, attached are the two main documents marked up again. Also attached is a PDF I just got containing information about two topics referenced in the drafts, which I wish had been provided months ago.

You should carefully review these, especially highlighted areas. Three key issues:

1. HCS wants to maintain the May 1 substantial completion date that is in the consciousness of the public and the board, unless and until the Board agrees to a change. I don't feel like this request is reasonable in addition the schedule is not totally within my control. Our subcontractors bid the work in accordance with the schedule we published. Our schedule was in accordance with the RFP. To accelerate the schedule our subs will have to work nights and weekends or supplement their staff, which is costly.
I assume this is would be very distasteful to the Board but after contracts are signed we would be willing to put together a cost to accelerate the projects and complete the work by May 1st. Assembling a cost to accelerate and developing a new schedule would take tremendous effort and time so it would need to be done after contracts are executed. I know you had your reasons but I wish HCS had signed the permit applications when we had requested, this would have made your request to accelerate the project much easier to manage. I am so very sorry but the only way I know to accelerate the schedule.
2. HCS also wants to be able to use the designs as prototypes for the future, another topic which I wish had been brought up sooner but one to which they attach obvious importance. They wanted to "own the plans" but I have tried to convert this to a license to use it as a prototype, recognizing the SC Architecture board's policy on the same requires re-sealing of re-used plans anyway, and also recognizing that there is no need for HCS to "own" the copyright to your work to the extent you may want to copy your own work elsewhere. Our company policy is that we do not grant ownership of drawings unless we are paid up front for those rights. We could quote you a fee for that however what we typically see is at the time of re-use we would negotiate a contract for the re-use of the plans. We typically charge re-use fee of approximately 6% for a high performance building. In addition, we would need to approve the contractor and key mechanical and electrical subcontractors.
3. HCS does not want to pay for "proposal prep" although they are agreeing to being billed for the part of your work that is carrying forward into the end product, so you will see that noted. While HCS has no obligation to pay for proposal prep as we requested the AIA document allows for proposal prep work to be invoiced at contract signing because there is a recognition of the massive effort a design build proposal takes. If we must wait to submit for proposal prep and SD's with our first application for payment we cannot object however I would humbly request that if HCS has the ability to pay us for proposal prep, SDs and preconstruction in accordance with the standard AIA contract that HCS allow us to invoice when the contract is signed. If you allow us to invoice at contract signing and if HCS can commit to us receiving payment within two weeks of the contract signing you can simply add \$5000.00 per job to the owner contingency. This is approximately equal to the interest we would pay our bank if we borrowed the money on our line and if we had to wait for payment in accordance with the normal payment cycle in the contract.

I realize we will need to discuss these issues tomorrow, which is why planning to sign something at 3 pm probably wouldn't work given that I have to make 5 sets to cover all the projects, and can't do that until terms are settled.

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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Thursday, November 19, 2015 4:24 PM
To: Keith R. Powell
Subject: RE: HCS contracts forms

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

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From: Keith R. Powell [mailto:kpowell@childs-halligan.net]
Sent: Thursday, November 19, 2015 12:30 PM
To: Robbie Ferris
Subject: FW: HCS contracts forms
Importance: High

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Sheri L. Wainscott

From: Keith R. Powell
Sent: Thursday, November 19, 2015 4:25 PM
To: Robbie Ferris
Subject: RE: HCS contracts forms

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Thanks -- will get back to you.

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From: Keith R. Powell [mailto:kpowell@childs-halligan.net]

Sent: Thursday, November 19, 2015 12:30 PM

To: Robbie Ferris

Subject: FW: HCS contracts forms

Importance: High

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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Thursday, November 19, 2015 6:12 PM
To: Keith R. Powell
Subject: horry

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

For the site they don't have yet we need to use calender days from a notice to proceed or something of the sort...unless you have another idea...I just don't know where they are in buying that site.



Robert W. Ferris, AIA, REFP, LEED AP
CEO/President
SfL+a Architects
333 Fayetteville Street, Suite 225
Raleigh, NC 27601
Cell: 919.610.2251
Fax: 919.573.6355
rferris@sfla.biz
www.sfla.biz

"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

Sheri L. Wainscott

From: Keith R. Powell
Sent: Friday, November 20, 2015 12:17 PM
To: Robbie Ferris
Subject: RE: HCS contracts forms
Attachments: EX B v2 - Working Draft - (1).docx; 673757_2 141 main - Working Draft - (1).docx

Follow Up Flag: Follow up
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Categories: Red Category

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Importance: High

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Sheri L. Wainscott

From: Keith R. Powell
Sent: Friday, November 20, 2015 12:43 PM
To: Robbie Ferris
Subject: RE: HCS contracts forms

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Forgot to add – they did not want to do the consent to the CX. They felt it would fuel adverse press if FFEP got to “pick its own” owner agent. Obviously you will be free to complain about whoever they do get, if warranted.

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To: Keith R. Powell
Subject: Re: HCS contracts forms
Attachments: image001.png

Follow Up Flag: Follow up
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I am printing it and I will start working on it now we can talk later today when you finish up

Sent from my iPhone

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What do you think? I will run you a variance-checked version of everything a little later today when I think we have all settled.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Robbie Ferris [<mailto:RFerris@sfla.biz>]
Sent: Thursday, November 19, 2015 4:24 PM
To: Keith R. Powell
Subject: RE: HCS contracts forms

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1. On the schedule I have talked with our subs and they can't accelerate the schedule with an increase in cost. I wish this answer were different so I guess we will have to go get the board to address the issue.
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 - a. We be paid for our up front work as previously discussed within 2 weeks of signing the contract.
 - b. We be given the right to approve the owners selection of and scope for the commissioning agent. The owner will not hire the commissioning agent without our approval.
3. If the owner is interested we have found that we can buy a \$15,000,000 professional liability insurance policy with an 8 year tail that covers all known designers at the time we bind the policy. That policy will cost us about \$1,300,000.00 but if the owner is willing to limit our liability to the limits of our professional liability insurance we will spend the extra money on that policy. This would be a great benefit because the owner would have significantly more coverage (7 times) more than they would otherwise have. Plus it protects the owner over the 8 years. It costs us more money but I think it would protect us all.
4. Typos:
 - a. 2.1.1- the design builder is repeated
 - b. 9.8.3- review thei think you left the word work out?
 - c. Were fine with exhibit e and f that you sent over. We would ask that you consider the following. Under section 5.7 Key Personnel, Contractors and Suppliers: If the Owner has objection to personnel, Contractors, or suppliers and require that another personnel, Contractor, or supplier be used, they should pay for the difference in price.

From: Keith R. Powell [mailto:kpowell@childs-halligan.net]

Sent: Thursday, November 19, 2015 12:30 PM

To: Robbie Ferris

Subject: FW: HCS contracts forms

Importance: High

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1. The staff does not believe it has authority to extend beyond the May 1st date. It is clear to me that I'm not going to be able to do anything about that in the absence of a board action. However, FFEP has a monthly report directly to the Board, so certainly you will have many opportunities to explain the reasonableness and basis of the proposed durations to the Board and seek the necessary extensions – so much was made of this in the informal statements and press, though, that it may not be in anyone's interest to breach the May 1 date while so much public attention is focused on this. When the SMS site is pinned down, for example, might be a time to address it.
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4. I can't make any progress on the retainage issue.
5. Everyone is relieved there has been no protest.

I think we ought to plan to do this execution meeting on Monday. I would like to get all the terms settled by mid-day tomorrow and then be able to create and circulate the final sets of all 5 projects on Friday afternoon.

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From: Mark Wolfe [mailto:MWolfe002@horrycountyschools.net]

Sent: Thursday, November 19, 2015 11:35 AM

To: Keith R. Powell; John Gardner; Ara Heinz; Rick Maxey; Kenneth Generette; Daryl Brown; William F. Halligan

Subject: RE: HCS contracts forms

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2. The architect receiving the original plans acknowledges and accepts full responsibility for the adequacy of the design,
3. The receiving architect absolves the original architect of any responsibility of any kind as they relate to the plans, and
4. By absolving the original architect of responsibility for another architect's reuse, would therefore not be entitled to reuse fees because they have no professional liability.

If the original architect is chosen to reuse the plans in a site adapt project, they would certainly be entitled to a reasonable reuse fee, but not a full design fee.

Thank you,
Mark

Mark A. Wolfe, RLA | Executive Director of Facilities
Horry County Schools | Facilities | 1160 E. Highway 501 | Conway, SC 29526
P: 843/488-6967
Email: mwolfe002@horrycountyschools.net
Website: www.horrycountyschools.net
<image001.png>

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<EX B v2 - Working Draft - (1).docx>

<673757_2 141 main - Working Draft - (1).docx>

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 20, 2015 3:12 PM
To: Keith R. Powell
Subject: RE: HCS drafts

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

I have been very tied up today, I am still trying to get thru this. I am sorry I have not gotten back to you.

From: Keith R. Powell [<mailto:kpowell@childs-halligan.net>]
Sent: Friday, November 20, 2015 2:16 PM
To: Robbie Ferris
Subject: HCS drafts

Added language from HCS forms not included this morning. Still have 1 typo to fix that you noted. Changed signature to Board Chair.

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From: Keith R. Powell
Sent: Friday, November 20, 2015 3:20 PM
To: Robbie Ferris
Subject: RE: HCS drafts

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Categories: Red Category

That's OK. I need to do some stuff over the weekend anyway so I'll have my laptop and be able to make the 5 sets whenever we get the last wording settled.

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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 20, 2015 7:32 PM
To: Keith R. Powell
Subject: RF revisions to checked draft 11_20_2015
Attachments: RF revisions to checked draft 11_20_2015.docx

Follow Up Flag: Follow up
Flag Status: Flagged

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Keith,

Attached are what I believe are the last few changes. Call me any time, day or night, to discuss if you like.

Please remember there are differences in the allowances, also don't forget the allowance for socastee ms site. Of 2.5 mil

Also we added language that says we get time extension for them not having a site.

From: Aaron Thomas [<mailto:athomas@metconus.com>]
Sent: Friday, November 20, 2015 7:26 PM
To: Robbie Ferris
Subject: FW: RF revisions to checked draft 11_20_2015

Warm Regards,

Aaron Thomas, MCM, LEED-AP | President
Metcon, Inc. | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372
office 910.521.8013 | mobile 910.734.0537 | email: athomas@metconus.com
[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)



PEMBROKE | RALEIGH | CHARLOTTE | COLUMBIA

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From: Aaron Thomas
Sent: Friday, November 20, 2015 6:56 PM

To: Robert W. Ferris <rferris@sfla.biz>

Subject: RF revisions to checked draft 11_20_2015

A141 – Suggested Changes

2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

The Design-Builder may invoice the ~~Design-Builder may invoice~~ the owner for \$1,118,043. for its design work performed prior to the execution of the Design-Build Amendment. This amount is within and part of the price agreed in the Design-Build Amendment.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or delay in purchase of any project property or owner provided surveying and testing of such property (in no case shall the duration of the project be less than the duration outlined in the design builders original proposal to the owner); or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.3 Weather Delays: When adverse weather conditions are the basis for a request for additional time, such request shall be documented by weather data from the National Oceanic and Atmospheric Administration (NOAA) for the locale of the project using a ten year average (2005-2014) of accumulated record mean values of climatological data. ~~substantiating the weather conditions a) were abnormal for a period of time which could not have been reasonably anticipated; b) had an adverse effect on the work scheduled, and alternate work unaffected by the weather could not have been done; and c) had an adverse effect on the construction schedule such that the loss of work time will adversely impact the established completion date. The Contractor must make every effort to mitigate the potential effect of the weather on the construction schedule including, but not limited to, rescheduling of subcontractors, pumping water from work areas, rescheduling work hours to alternate work days within the work week, or other such actions.~~ Such time extension request shall be in writing and submitted to the District with the application for payment for approval within ten (10) days from the end of the event causing the impact on the construction schedule. ~~An extension of time not requested within the appropriate time period shall not be considered.~~ The approved extension of time shall be incorporated in the next *Change Order*.

§ 8.2.4 Anticipated Weather Delays: A total of two (2) days per calendar month (non-cumulative) shall be anticipated by the Contractor as "adverse weather," and such time shall not be considered justification for an extension of time. ~~Such anticipated adverse weather days are established only for normally scheduled work days, excluding Saturdays, Sundays and major holidays, unless such adverse weather conditions on those days are severe enough to impact the scheduled work on the following work day.~~ If adverse weather days beyond the two (2) days anticipated are substantiated by written (NOAA) data indicating precipitation greater than .10" occurred that day and the Contractor could not mitigate the impact of the additional adverse weather days, an extension of time will be granted of ~~allowed only to the extent of the actual impact on the last approved construction schedule and only to the extent of one (1) full day of extended time for each calendar day of adverse weather conditions which prevented a forty-hour work week within a seven (7) day calendar week.~~ If the precipitation over .10" is so great that it causes subsequent days work to be lost those days may also be requested as a time extension and will be granted day for day basis for days lost in construction operations. A request for adverse weather extension shall not be allowed after the date established for substantial completion.

Exhibit A – Suggested Changes

Under allowances- Don't forget that the value for some allowances differ on some schools. For example don't forget that Socastee Middle School has a site allowance that needs to be listed for \$2,500,000.00

Exhibit B – Suggested Changes

B.3.2- ARTICLE B.1 . GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1. & B.3.2.

Sheri L. Wainscott

From: Keith R. Powell
Sent: Friday, November 20, 2015 8:37 PM
To: Robbie Ferris
Subject: Re: RF revisions to checked draft 11_20_2015
Attachments: image002.png

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Thanks. Currently in a "Madeline" the little French girl tv marathon with Cabernet for parents - will check out on my pc tomorrow.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
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[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)

<image002.png>

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<RF revisions to checked draft 11_20_2015.docx>

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Saturday, November 21, 2015 8:25 AM
To: Keith R. Powell
Subject: RE: HCS contracts forms

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,

Our plan is that if they pick a bad CX we will hire our own CX because we need a quality commissioning job.. I think them not giving us approval authority is short sighted. I guess they don't see themselves as a part of a team, they see themselves as separate from the team. Odd!!

From: Keith R. Powell [mailto:kpowell@childs-halligan.net]
Sent: Friday, November 20, 2015 12:43 PM
To: Robbie Ferris
Subject: RE: HCS contracts forms

Forgot to add – they did not want to do the consent to the CX. They felt it would fuel adverse press if FFEP got to “pick its own” owner agent. Obviously you will be free to complain about whoever they do get, if warranted.

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From: Keith R. Powell
Sent: Friday, November 20, 2015 12:17 PM
To: 'Robbie Ferris'
Subject: RE: HCS contracts forms

Robbie – I've got a block of time from now to about 3:30 where I can't work on this. The A141 is attached with changes related to your points below. I am going to have to take this to the Board on Monday night for a motion, and will probably change the signatory from John Gardner to the board chair. Joe is aware of this.

I have put in the more generous time claims provisions that you think will get you the time you need, and I have updated the prototype language and increased the initial invoice per your chart. On SMS we will probably leave in the 5/1 date as with the others, but can put in a clause allowing time for delays in acquiring a site – same principle.

The insurance idea is worth considering but we don't have time to fully vet it, so I have added a note in Exhibit B that the insurance can be changed by agreement at any time.

I still need to fix 2.1.1 and to copy over the HCS's exhibits e and f, but wanted to get this to you before I get distracted for a few hours.

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Thank you,

Mark

Mark A. Wolfe, RLA | Executive Director of Facilities
Horry County Schools | Facilities | 1160 E. Highway 501 | Conway, SC 29526
P: 843/488-6967
Email: mwolfe002@horrycountyschools.net
Website: www.horrycountyschools.net



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Sent: Saturday, November 21, 2015 1:17 PM
To: Keith R. Powell
Subject: Fwd: RF revisions to checked draft 11_20_2015
Attachments: image002.png; ATT00001.htm; RF revisions to checked draft 11_21_2015.docx; ATT00002.htm

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith please see below, there are a few tweaks to what we sent you last night. It should simplify things a little and take some of the?'s that could arise later out

Sent from my iPhone

Begin forwarded message:

From: Aaron Thomas <athomas@metconus.com>
Date: November 21, 2015 at 1:15:16 PM EST
To: "Robert W. Ferris" <rferris@sfla.biz>
Subject: FW: RF revisions to checked draft 11_20_2015

Robbie- I just read this again and realized we had made a mistake that could cause confusion. The attached revision made 2 minor changes to what we sent last night:

1. On weather delays I deleted the reference to the 10 year NOAA average being a baseline we would compare to. I did this because if we are already using 2 days per month as the baseline for adverse weather all we need NOAA for is to substantiate the days over 2 so it is not subjective in nature with the staff. Example If we have 5 days of rain in December 2015 that is over .10" then we would turn in the NOAA report for the project locale showing we had the 5 days over .10 and we would get an extension via change order for 3. $<(5 \text{ days over } .10" - (2 \text{ days expected in contract} = (3) \text{ days extension}>$
2. I also added ACT OF GOD Language to the 8.2.1. We talked about it but forgot to add it. Must have been tired.

Call me if you have any questions. I'm at the office.

Warm Regards,

Aaron Thomas, MCM, LEED-AP | President
Metcon, Inc. | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372
office 910.521.8013 | mobile 910.734.0537 | email:athomas@metconus.com
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A141 – Suggested Changes

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The Design-Builder may invoice the Design-Builder may invoice the owner for \$1,118,043. for its design work performed prior to the execution of the Design-Build Amendment. This amount is within and part of the price agreed in the Design-Build Amendment.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or delay in purchase of any project property or owner provided surveying and testing of such property (in no case shall the duration of the project be less than the duration outlined in the design builders original proposal to the owner); or by an act of god, tornado, fire, hurricane, blizzard, earthquake, typhoon, or flood that damages completed work, stored material, or impedes progress of the work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.3 Weather Delays: When adverse weather conditions are the basis for a request for additional time, such request shall be documented by weather data from the National Oceanic and Atmospheric Administration (NOAA) for the locale of the project. substantiating the weather conditions a) were abnormal for a period of time which could not have been reasonably anticipated; b) had an adverse effect on the work scheduled, and alternate work unaffected by the weather could not have been done; and c) had an adverse effect on the construction schedule such that the loss of work time will adversely impact the established completion date. The Contractor must make every effort to mitigate the potential effect of the weather on the construction schedule including, but not limited to, rescheduling of subcontractors, pumping water from work areas, rescheduling work hours to alternate work days within the work week, or other such actions. Such time extension request shall be in writing and submitted to the District with the application for payment for approval within ten (10) days from the end of the event causing the impact on the construction schedule. An extension of time not requested within the appropriate time period shall not be considered. The approved extension of time shall be incorporated in the next *Change Order*.

§ 8.2.4 Anticipated Weather Delays: A total of two (2) days per calendar month (non-cumulative) shall be anticipated by the Contractor as "adverse weather," and such time shall not be considered justification for an extension of time. Such anticipated adverse weather days are established only for normally scheduled work days, excluding Saturdays, Sundays and major holidays, unless such adverse weather conditions on those days are severe enough to impact the scheduled work on the following work day. If adverse weather days beyond the two (2) days anticipated are substantiated by written (NOAA) data indicating precipitation greater than .10" occurred that day and the Contractor could not mitigate the impact of the additional adverse weather days, an extension of time will be granted of allowed only to the extent of the actual impact on the last approved construction schedule and only to the extent of one (1) full day of extended time for each calendar day of adverse weather conditions which prevented a forty-hour work week within a seven (7) day calendar week. If the precipitation over .10" is so great that it causes subsequent work days to be lost those days may also be requested as a time extension and will be granted day for day basis for days lost in construction operations. A request for adverse weather extension shall not be allowed after the date established for substantial completion.

Exhibit A – Suggested Changes

Under allowances- Don't forget that the value for some allowances differ on some schools. For example don't forget that Socastee Middle School has a site allowance that needs to be listed for \$2,500,000.00

Exhibit B – Suggested Changes

B.3.2- ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1. & B.3.2

Sheri L. Wainscott

From: Keith R. Powell
Sent: Saturday, November 21, 2015 4:13 PM
To: 'Robbie Ferris'
Subject: RE: RF revisions to checked draft 11_20_2015
Attachments: 644371 AIA A141 - Checked Draft - (1).pdf; 644371 AIA A141 - Checked Draft - (2).pdf; 644371 AIA A141 - Checked Draft - (3).pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

How are these? Will make changes for MB and SMS issues.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Robbie Ferris [<mailto:RFerris@sfla.biz>]
Sent: Saturday, November 21, 2015 1:17 PM
To: Keith R. Powell
Subject: Fwd: RF revisions to checked draft 11_20_2015

Keith please see below, there are a few tweaks to what we sent you last night. It should simplify things a little and take some of the?'s that could arise later out

Sent from my iPhone

Begin forwarded message:

From: Aaron Thomas <athomas@metconus.com>
Date: November 21, 2015 at 1:15:16 PM EST
To: "Robert W. Ferris" <rferris@sfla.biz>
Subject: FW: RF revisions to checked draft 11_20_2015

Robbie- I just read this again and realized we had made a mistake that could cause confusion. The attached revision made 2 minor changes to what we sent last night:

1. On weather delays I deleted the reference to the 10 year NOAA average being a baseline we would compare to. I did this because if we are already using 2 days per month as the baseline for adverse weather all we need NOAA for is to substantiate the days over 2 so it is not

subjective in nature with the staff. Example If we have 5 days of rain in December 2015 that is over .10" then we would turn in the NOAA report for the project locale showing we had the 5 days over .10 and we would get an extension via change order for 3. $<(5) \text{ days over } .10'' - (2) \text{ days expected in contract} = (3) \text{ days extension}>$

2. I also added ACT OF GOD Language to the 8.2.1. We talked about it but forgot to add it. Must have been tired.

Call me if you have any questions. I'm at the office.

Warm Regards,

Aaron Thomas, MCM, LEED-AP | President

Metcon, Inc. | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372

office 910.521.8013 | mobile 910.734.0537 | email: athomas@metconus.com

[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)

Sheri L. Wainscott

From: Keith R. Powell
Sent: Friday, November 20, 2015 2:16 PM
To: Robbie Ferris (RFerris@sfla.biz)
Subject: HCS drafts
Attachments: EX B v2 - Checked Draft - (1)(1).pdf; 673449 EX A - Checked Draft - (1).pdf; 673757_2
141 main - Checked Draft - (1)(2).pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Added language from HCS forms not included this morning. Still have 1 typo to fix that you noted. Changed signature to Board Chair.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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Document A141™ – 2014 Exhibit B

Insurance and Bonds

for the following PROJECT:
(Name and location or address)

New Carolina Forest Middle School
(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

THE OWNER:
(Name, legal status and address)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.
335 Four Mile Rd.
Conway, SC 29528

THE DESIGN-BUILDER:
(Name, legal status and address)

FIRSTFLOOR ENERGY POSITIVE LLC,
333 Fayetteville St., Suite 225
Raleigh, NC 27601

THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the nineteenth day of November in the year two thousand fifteen (2015).
(In words, indicate day, month and year.)

TABLE OF ARTICLES

- B.1 GENERAL
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in

Section 11.2.2.1 of the

(Paragraphs deleted)

Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000) for each occurrence and five million (\$ 5,000,000.00) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property, and must contain the subcontractor exception to the "your work" exclusion;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000) per claim and one million (\$ 1,000,000.00) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000) per claim and two million (\$ 2,000,000) in the aggregate.

(Paragraphs deleted)

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and

thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

§ B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's professional liability insurance.	100% of contract value.

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE B.3 OWNER'S INSURANCE

§ B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

(Paragraph deleted)

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

(Paragraph deleted)

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

(Paragraphs deleted)

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the

cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

(Paragraph deleted)

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgage clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement.

(Paragraphs deleted)

Additions and Deletions Report for AIA® Document A141™ – 2014 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

New Carolina Forest Middle School
(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

...

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.
335 Four Mile Rd.
Conway, SC 29528

...

FIRSTFLOOR ENERGY POSITIVE LLC,
333 Fayetteville St., Suite 225
Raleigh, NC 27601

...

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the nineteenth day of November in the year two thousand fifteen (2015).

...

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1.

PAGE 2

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:
(~~If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.~~)

Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000) for each occurrence and five million (\$ 5,000,000.00) in the aggregate providing coverage for claims including

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User Notes:

(1278235989)

PAPR - 003472

- ...
3 damages because of injury to or destruction of tangible property; property, and must contain the subcontractor exception to the "your work" exclusion;
...

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000) per claim and one million (\$ 1,000,000.00) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.
...

\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000) per claim and two million (\$ 2,000,000) in the aggregate.

§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than (\$) per claim and (\$) in the aggregate.

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution and Automobile Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

PAGE 3

A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's

100% of contract value.

professional liability insurance.

...

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.2 **Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

§ B.3.2.4 **Loss of Use Insurance.** At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including

consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

§ B.3.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ B.3.2.7 **Waivers of Subrogation.** The Owner and Design Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

ARTICLE B.4 — SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:



Document A141™ – 2014 Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder dated the twenty-third day of November in the year two thousand fifteen (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:
(Name and location or address)

New Carolina Forest Middle School per Owner's Request for Proposals No. 1415-91 and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91

THE OWNER:
(Name, legal status and address)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.
335 Four Mile Rd.
Conway, SC 29526

THE DESIGN-BUILDER:
(Name, legal status and address)

FIRSTFLOOR ENERGY POSITIVE LLC,
333 Fayetteville St., Suite 225
Raleigh, NC 27601

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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[☒] Stipulated Sum, in accordance with Section A.1.2
(Paragraphs deleted)
below

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be forty-five million nine hundred thirty thousand two hundred twenty-seven dollars (\$ 45,930,227.00), subject to authorized adjustments as provided in the Design-Build Documents.

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ A.1.5.1.3 An itemized payment request shall be submitted to the District by the 25th day of each month that payment is being requested and at completion of the project, using the form provided by the District. The payment request shall not include a) any work anticipated to be completed but not completed by the end of each month being requested; b) any materials not incorporated into the work to be performed except those properly stored as stated in the Contract Agreement; c) any damaged, used, inferior or substituted materials not meeting the requirements and standards of the contract; nor d) any amounts the Contractor does not intend to pay to any subcontractor or supplier, where performance or material quality is in question or any other dispute is pending. If, upon review of the payment request and based upon the best determination of the District, the amount requested does not accurately represent, in the District's opinion, the progress of the completed work to be performed in the Scope of Work the District shall have the right to adjust the payment request to more accurately reflect the percentage of completed work/services. The District shall approve and authorize payment to the Contractor no more often than once monthly. Payment by the District of undisputed amounts shall be made by the 15th day of the following month if request is received by Contractor by the 25th of the month. If payment request is not received by the 25th, the payment will be made within thirty (30) days from the date the District receives the payment request

(Paragraph deleted)

§ A.1.5.1.5 With each Application for Payment the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of three and one-half percent (3.5 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of three and one-half percent (3.5 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

(Paragraphs deleted)

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements which extend beyond final payment.

(Paragraph deleted)

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work as follows:

May 1, 2017.

(Table deleted)

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

Liquidated damages per A141-2014.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the Owner's Design Requirements (including addenda to the RFP) and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91.:

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraph deleted)

§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

Owner Furniture Allowance	\$ 1,500,000
Owner Hardware Allowance	\$ 350,000
Owner Controls Allowance	\$ 650,000
Owner Fire Alarm Allowance	\$ 750,000
Owner Special Inspections All	\$ 150,000
Owner Commissioning Allowance	\$ 125,000
Owner Technology Allowance	\$ 1,865,000
Owner Landscaping Allowance	\$200,000

.2 Contingencies

Owner contingency is currently Not in Contract and amounts will be determined by Modification.

§ A.3.1.6 Design-Builder's assumptions and clarifications:

Pursuant to the Proposal accepted by the Horry County Board of Education on November 2, 2015.

(Paragraphs deleted)

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:

(Identify name, title and contact information.)

Carolina Forest Middle School:
Superintendent: Mark Branch
Project Manager: Charlie Rollins

(Paragraphs deleted)

Assistant Superintendent: Gary Pipkin

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

(List name, discipline, address and other information.)

SFL+ta Architects: Architect, Raleigh NC

Metcon/TA Loving joint venture: General Contractor, Pembroke NC

ARTICLE A.5 COST OF THE WORK

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ A.5.4 Other Agreements

(Paragraph deleted)

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

OWNER (Signature)

Joe Defeo, Chairman of the Board of Education

(Printed name and title)

DESIGN-BUILDER (Signature)

Robert Ferris, Authorized Member

(Printed name and title)

Additions and Deletions Report for AIA® Document A141™ – 2014 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:12:59 on 11/20/2015.

PAGE 1

This Amendment is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder dated the twenty-third day of November in the year two thousand fifteen (the "Agreement")

...

New Carolina Forest Middle School per Owner's Request for Proposals No. 1415-91 and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91

...

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina,
335 Four Mile Rd.
Conway, SC 29526

...

FIRSTFLOOR ENERGY POSITIVE LLC,
333 Fayetteville St., Suite 225
Raleigh, NC 27601

PAGE 2

[☒] Stipulated Sum, in accordance with Section A.1.2 below

[☐] ~~Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below~~

[☐] ~~Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below~~

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

...

§ A.1.2.1 The Stipulated Sum shall be (\$ 45,930,227.00), forty-five million nine hundred thirty thousand two hundred twenty-seven dollars (\$ 45,930,227.00), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

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(1196507701)

PAPR - 003481

~~§ A.1.2.3 Unit prices, if any:~~

~~(Identify item, state the unit price, and state any applicable quantity limitations.)~~

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

~~§ A.1.3 Cost of the Work Plus Design Builder's Fee~~

~~§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.~~

~~§ A.1.3.2 The Design Builder's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Design Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)~~

~~§ A.1.4 Cost of the Work Plus Design Builder's Fee With a Guaranteed Maximum Price~~

~~§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.~~

~~§ A.1.4.2 The Design Builder's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Design Builder's Fee and the method for adjustment to the Fee for changes in the Work.)~~

~~§ A.1.4.3 Guaranteed Maximum Price~~

~~§ A.1.4.3.1 The sum of the Cost of the Work and the Design Builder's Fee is guaranteed by the Design Builder not to exceed (\$), subject to additions and deductions for changes in the Work as provided in the Design Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design Builder without reimbursement by the Owner.~~

~~(Insert specific provisions if the Design Builder is to participate in any savings.)~~

~~§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price~~

~~Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design Builder's Fee, and other items that comprise the Guaranteed Maximum Price.~~

~~(Provide information below or reference an attachment.)~~

~~§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design Build Documents and are hereby accepted by the Owner:~~

~~(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)~~

~~§ A.1.4.3.4 Unit Prices, if any:~~

~~(Identify item, state the unit price, and state any applicable quantity limitations.)~~

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

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§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

...

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

month.

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the day of the month, the Owner shall make payment of the certified amount to the Design Builder not later than the day of the month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than () days after the Owner receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)* An itemized payment request shall be submitted to the District by the 25th day of each month that payment is being requested and at completion of the project, using the form provided by the District. The payment request shall not include a) any work anticipated to be completed but not completed by the end of each month being requested; b) any materials not incorporated into the work to be performed except those properly stored as stated in the Contract Agreement; c) any damaged, used, inferior or substituted materials not meeting the requirements and standards of the contract; nor d) any amounts the Contractor does not intend to pay to any subcontractor or supplier, where performance or material quality is in question or any other dispute is pending. If, upon review of the payment request and based upon the best determination of the District, the amount requested does not accurately represent, in the District's opinion, the progress of the completed work to be performed in the Scope of Work the District shall have the right to adjust the payment request to more accurately reflect the percentage of completed work/services. The District shall approve and authorize payment to the Contractor no more often than once monthly. Payment by the District of undisputed amounts shall be made by the 15th day of the following month if request is received by Contractor by the 25th of the month. If payment request is not received by the 25th, the payment will be made within thirty (30) days from the date the District receives the payment request

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design Builder, less (2) that portion of those payments attributable to the Design Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builders Applications for Payment.

PAGE 3

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of three and one-half

- percent (3.5 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of three and one-half percent (3.5 %);

...

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Article A.5 of this Amendment;
- .2 Add the Design-Builder's Fee, less retainage of percent (%). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of percent (%) from that portion of the Work that the Design-Builder self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

§ A.1.5.3.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
2. Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
3. Add the Design-Builder's Fee, less retainage of percent (%). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
4. Subtract retainage of percent (%) from that portion of the Work that the Design-Builder self-performs;
5. Subtract the aggregate of previous payments made by the Owner;
6. Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
7. Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, requirements which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

...

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than () days from the date of this Amendment, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

May 1, 2017.

Portion of Work	Substantial Completion Date

...

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Liquidated damages per A141-2014.

PAGE 4

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following: Owner's Design Requirements (including addenda to the RFP) and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91.:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

Section	Title	Date	Pages
---------	-------	------	-------

§ A.3.1.3 The Drawings:

(Either list the drawings here or refer to an exhibit attached to this Amendment.)

Number	Title	Date
--------	-------	------

§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
-------	------	-------

Other identifying information:

Owner Furniture Allowance	\$ 1,500,000
Owner Hardware Allowance	\$ 350,000
Owner Controls Allowance	\$ 650,000
Owner Fire Alarm Allowance	\$ 750,000
Owner Special Inspections All	\$ 150,000
Owner Commissioning Allowance	\$ 125,000
Owner Technology Allowance	\$ 1,865,000
Owner Landscaping Allowance	\$200,000

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User Notes:

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Owner contingency is currently Not in Contract and amounts will be determined by Modification.

...

Pursuant to the Proposal accepted by the Horry County Board of Education on November 2, 2015.

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

§ A.3.1.8 To the extent the Design Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

...

- .1—Superintendent Carolina Forest Middle School:
Superintendent: Mark Branch
- .2—Project Manager Project Manager: Charlie Rollins

.3—Others

Assistant Superintendent: Gary Pipkin

...

SFL+a Architects: Architect, Raleigh NC
Metcon/TA Loving joint venture: General Contractor, Pembroke NC

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§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off site workshops.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design Builder's supervisory and administrative personnel when stationed at the site.

(If it is intended that the wages or salaries of certain personnel stationed at the Design Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
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§ A.5.1.1.3 Wages and salaries of the Design Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.5.1.1.4 Costs paid or incurred by the Design Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary

benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

§ A.5.1.2 Contract Costs. Payments made by the Design Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design Builder shall mean fair market value.

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design Builder owned item may not exceed the purchase price of any comparable item. Rates of Design Builder owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self insurance for either full or partial amounts of the coverages required by the Design Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design Builder is liable.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design Builder is required by the Design Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

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§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Build Documents resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Build Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Build Documents' negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Build Documents, reasonably incurred by the Design-Build Documents after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Build Documents' standard written personnel policy for relocation, and temporary living allowances of, the Design-Build Documents' personnel required for the Work.

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Build Documents' supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Build Documents, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Build Documents and only to the extent that the cost of repair or correction is not recovered by the Design-Build Documents from insurance, sureties, Contractors, suppliers, or others.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Build Documents; any entity in which any stockholder in, or management employee of, the Design-Build Documents owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Build Documents. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Build Documents and a related party, the Design-Build Documents shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Build Documents shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Build Documents shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include the items listed below:

- ~~1~~ Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- ~~2~~ Expenses of the Design-Builder's principal office and offices other than the site office;
- ~~3~~ Overhead and general expenses, except as may be expressly included in Section A.5.1;
- ~~4~~ The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- ~~5~~ Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- ~~6~~ Any cost not specifically and expressly described in Section A.5.1; and
- ~~7~~ Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design-Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below: Documents.

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Joe Defeo, Chairman of the Board of Education

Robert Ferris, Authorized Member